

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 : CR-10-074
 -against- :
 : United States Courthouse
 HERIBERTO MARTINEZ, also known : Central Islip, New York
 as "Boxer," and CARLOS ORTEGA, :
 also known as "Silencio" and :
 "Silent," :
 : February 14, 2013
 : 9:30 a.m.
 Defendants. :
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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT COURT JUDGE, and a Jury

APPEARANCES:

For the Government: LORETTA E. LYNCH, ESQ.
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Central Islip, New York 11722
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ARNOLD LEVINE, ESQ.

For Defendant Ortega: MARIANNE RANTALA, ESQ.
IRA LONDON, ESQ.

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Proceedings recorded by mechanical stenography
Transcript produced by Computer

1 (The following ensued in the absence of the
2 jury.)

3 (Call to Order of the Court. Appearances stated
4 as indicated above.)

5 THE COURT: The jurors are all here. There is
6 one issue I wanted to raise that came up last night.

7 A juror who is sitting in seat No. 1 mentioned
8 to my deputy, he pulled her to the aside at the end of the
9 day yesterday and said that he was confused about the
10 interpreter; that he said other jurors are confused about
11 the interpreter.

12 I don't know what that means exactly. I think
13 it is possible he may know some Spanish, maybe some other
14 jurors know some Spanish, and it is possible that they are
15 debating whether or not, especially due to the issue
16 regarding the translation yesterday where we took a break.

17 So my inclination, and I will hear if anybody
18 disagrees, was to tell them that I heard there was some
19 issue regarding the interpreter; that the interpreter
20 translates what the witness says and that is controlling.
21 If they know a little bit of Spanish or a lot of Spanish,
22 it doesn't matter. They are not allowed to use their own
23 individual translation of the witness' testimony.

24 I think that is the best instruction to give
25 them. If they have any issues regarding that issue, I

1 will explain to them that sometimes, as they see, the
2 interpreter will try to clarify with the witness or the
3 interpreters will talk amongst each other to try to get
4 the most accurate translation of a particular word or
5 phrase, but that they have to accept the interpreter's
6 translation.

7 Is there any disagreement with that?

8 MR. DURHAM: No, your Honor. We agree.

9 MR. LONDON: None from me.

10 MS. MACEDONIO: And I noted yesterday when we
11 took the break, it was probably about 4:20 in the
12 afternoon because the witness did clarify something, and
13 when the jurors came back in, there are two female jurors
14 in the back row; when your Honor said that the witness
15 needed to clarify something with the interpreter, they
16 were both shaking their heads as if in agreement, as if
17 there was some confusion that they understood as well.

18 So I think that was probably the issue.

19 THE COURT: Anything else?

20 MR. LONDON: I would like to reopen my cross to
21 offer in evidence the affidavit regarding the robbery and
22 the affidavit regarding the burglary.

23 THE COURT: Any objection to that?

24 MR. DURHAM: Yes, your Honor.

25 Mr. London did not lay a proper foundation. He

1 already read a majority of, if not the entire, document
2 into the record. The witness answered the questions.
3 Therefore, there is no basis to introduce those documents.

4 MR. LONDON: I will lay the foundation. That is
5 easy.

6 THE COURT: Yes. He essentially did read the
7 documents.

8 I will let you reopen it to show it to him to
9 make sure.

10 Is his signature on it?

11 MR. LONDON: No. I read from the printed
12 version, which is the detective's grand jury testimony
13 because it is clear. There is a handwritten version that
14 I could show him.

15 THE COURT: I don't think you can put in the
16 detective's testimony. But if there is a written
17 statement that he signed, I will let you put that in.

18 MR. DURHAM: Your Honor, I am also objecting.
19 I'm not sure what document that was. That is part of my
20 objection. Mr. London didn't provide us with copies of
21 these documents.

22 So we would object on that ground as well.

23 MR. LONDON: I thought they had copies. I will
24 review it with the government.

25 And we don't need to publish it now, with an

1 understanding that they can come in. I can mark them as
2 exhibits or -- should I offer them now, judge?

3 THE COURT: Yes. I guess show it to the
4 government now. But it is only if it is something that he
5 signed himself, Mr. London. Okay?

6 (There was a pause in the proceedings.)

7 MR. DURHAM: Your Honor, we have no objection to
8 the document Mr. London just showed us.

9 THE COURT: Okay.

10 Let's bring in the jury.

11 MS. RANTALA: There are actually two documents.

12 MR. DURHAM: I would request a copy once the
13 document has been marked.

14 THE COURT: Okay. I'm sorry, Mrs. Rantala.

15 MS. RANTALA: I want to mention there were two
16 separate documents, two separate affidavits.

17 THE COURT: Okay.

18 MS. MACEDONIO: So the record is clear, how do
19 you want us to mark the defendant's exhibits? Ortega 1,
20 Ortega 2?

21 MR. LONDON: Do you want them with digits, not
22 letters?

23 THE COURT: Use letters. Do it by the
24 defendant.

25 MR. LONDON: Shall I formally move to reopen, in

1 front of the jury?

2 THE COURT: I'm going to tell them that I am
3 going to allow you to.

4 MR. DURHAM: What has that been marked as?

5 MR. LONDON: Defendant A and B.

6 MR. DURHAM: You only showed me one document.

7 (The following ensued in the presence of the
8 jury at 9:55 am.)

9 THE COURT: Please be seated. Good morning,
10 members of the jury.

11 I see we are missing Juror No. 1.

12 (Juror 1 enters the courtroom.)

13 THE COURT: Okay. Good morning, everyone. It
14 is good to see you all.

15 Fortunately, we didn't have any snow last night,
16 which is good.

17 Before we continue, there is one issue I wanted
18 to discuss with you. One of the jurors, as we finished
19 for the day yesterday, mentioned there was some issue with
20 an interpreter's interpretation with respect to the
21 witness. I want to say two things with regard that.

22 First of all, these are court-certified
23 interpreters. As you can see, if there is an issue
24 regarding the translation of a particular word or term in
25 English, sometimes they will ask the witness to clarify or

1 sometimes they will speak with each other to make sure
2 they're getting the most accurate translation into English
3 as is possible.

4 With respect to jurors, the rule is very clear.
5 Whether you know a little bit of Spanish, a lot of
6 Spanish, whatever Spanish you may or may not know, jurors
7 are not permitted to do their own translation of what the
8 witnesses say. Whatever the translator says is what you
9 accept.

10 That is the record and that is what you accept.
11 You can't say well, I know some Spanish and I heard it
12 differently. You're not permitted to do that. It is only
13 what are the translator said. Okay?

14 We'll continue with the cross-examination.

15 I'm going to let Mr. London reopen his cross for
16 a moment to enter into evidence two documents.

17
18 **JIMMY SOSA**

19 called by the Government, having been previously
20 duly sworn/affirmed, continued testifying as
21 follows:

22 THE COURT: Mr. Sosa, I remind you that you are
23 still under oath.

24 Do you understand?

25 THE WITNESS: Yes, I understand.

1 THE COURT: Go ahead, Mr. London.

2 MR. LONDON: Thank you.

3

4 CROSS-EXAMINATION (CONTINUED)

5 BY MR. LONDON:

6 Q. Good morning, Mr. Sosa. Yesterday I was asking you
7 some questions about two sworn statements that you gave to
8 the Suffolk County Police Department.

9 Do you remember that?

10 A. Yes.

11 Q. I'm going to place two which have been marked for
12 identification as Defendant Ortega's A and Defendant
13 Ortega's B before you and I'd like you to look at them.
14 Don't say anything until I ask you a question.

15 When you finish looking at both of them, just
16 look up.

17 Do you recognize those statements?

18 A. Yes.

19 Q. Are those the statements you gave to the Suffolk
20 County Police Department under oath after you were
21 arrested for the robbery and burglary?

22 A. Yes.

23 MR. LONDON: I offer them in evidence as
24 Defendant Ortega A and Defendant Ortega B.

25 MR. DURHAM: No objection.

1 THE COURT: Defendant Ortega Exhibits A and B
2 are admitted.

3 (Defense Exhibits Ortega A and B in evidence.)

4 MR. LONDON: Thank you, your Honor.

5 THE COURT: Mr. Levine.

6

7 MR. LEVINE: Thank you, judge.

8 CROSS-EXAMINATION

9 BY MR. LEVINE:

10 Q. Good morning, Mr. Sosa.

11 A. Good morning.

12 Q. Mr. Sosa, Mr. London and I believe Mr. Durham asked
13 you questions regarding the Suffolk County case. Right?

14 Yes?

15 A. Yes, he was asking me questions.

16 Q. And in that case you pled guilty to the charge of
17 attempted robbery in the second degree and received a
18 sentence of two years in state prison?

19 A. Yes.

20 Q. And, in fact, your sentence on that case expired
21 two days ago. Correct?

22 A. Yes.

23 Q. And you were advised at the time that you took the
24 plea in that case, or even before, that a plea to that
25 charge and that sentence would require you to be deported

1 from this country. Right?

2 A. Yes.

3 Q. And that is separate and apart from anything that
4 happens to you in this case or whether you were -- whether
5 you were ever arrested in this particular case, federal
6 case.

7 A. Yes.

8 Q. And your understanding is that the efforts the
9 government would make for you in regards to an S-visa or
10 otherwise allowing you to stay in this country also
11 applied to your conviction on that case. Correct?

12 A. Yes. But I could fight that case.

13 Q. Okay. Now, in that particular case you committed
14 those crimes with, you said, your brother-in-law and a
15 female named Jocelyn?

16 A. Yes.

17 Q. They were not members of MS-13. Right?

18 A. No.

19 Q. They were not associates of MS-13. Right?

20 A. No.

21 Q. And that crime had nothing to do with MS-13. Right?

22 A. No.

23 Q. So even though you were a member of MS-13, that crime
24 had nothing to do with the gang?

25 A. Right.

1 Q. And so they are crimes that MS-13 members can commit
2 that really have nothing to do with the gang itself.
3 Right?

4 MR. DURHAM: Objection.

5 THE COURT: Overruled.

6 A. Yes.

7 BY MR. LEVINE:

8 Q. So not every crime committed by a member of MS-13 is
9 for the purpose of advancing or maintaining their position
10 within the gang. Right?

11 MR. DURHAM: Objection.

12 THE COURT: Sustained.

13 MR. DURHAM: Calls for a legal conclusion.

14 THE COURT: Sustained.

15 BY MR. LEVINE:

16 Q. Not every crime committed by an MS-13 member is done
17 for the purpose of or with having in mind how it affects
18 their membership in the gang.

19 MR. DURHAM: Objection. He asking for the
20 mindset of every MS-13 member who commits a crime.

21 THE COURT: I will permit it as it relates to
22 his knowledge as a gang member.

23 Go ahead.

24 A. Could you repeat the question?

25 THE COURT: Just phrase it as to his knowledge,

1 not what is in the mind of others.

2 BY MR. LEVINE:

3 Q. Mr. Sosa, to your knowledge, not every crime you have
4 committed has been for the purpose of maintaining or
5 enhancing your position with the gang. Right?

6 A. Right.

7 Q. And are you aware of crimes committed by other MS-13
8 members that had nothing to do with the gang?

9 A. Whether I am aware?

10 The majority, that I know of, have been as part
11 of the gang because they are members.

12 Q. But simply being a member doesn't mean that
13 everything you do is on behalf of the gang. Right?

14 A. Only there is a difference if you do it with several
15 members then practically it has to do with the gang.

16 Q. Are members of the gang also friends?

17 A. Some of them.

18 Q. And some of them will hang out with each other
19 separate and apart from other gang members?

20 A. With other members, I'm not sure. Not that I know
21 of.

22 Q. You said that you have spoken to the person you
23 believe to be Boxer, on the phone. Right?

24 A. Yes.

25 Q. And that was before you ever met him, the person?

1 A. Yes.

2 Q. You had never heard his voice before?

3 A. No.

4 Q. Do you know what date that was?

5 A. I'm not sure as to the date.

6 Q. Do you know what month that was?

7 A. I met both of them sometime between mid-January and
8 February.

9 Q. You say both of them. Are there two Boxers?

10 A. No. I was referring to Boxer and to another person.

11 Q. So you actually spoke to Boxer on the phone before
12 you participated in the murder of David Sandler?

13 A. Yes.

14 Q. Have you been shown your phone records by the
15 government?

16 A. The records, I have the records. That was among the
17 discovery on my case.

18 Q. Okay. And --

19 THE COURT: Let me just explain the term to the
20 jurors.

21 When he refers to discovery in the case, as part
22 of the criminal process the government produces discovery
23 of documents to the defendant that they are entitled to
24 under the law. When he refers to discovery, that is what
25 he is referring to: what the government produced to him

1 or his attorneys during the case.

2 BY MR. LEVINE:

3 Q. Would you agree that your phone records don't
4 indicate any phone communication between you and a
5 cellular phone for Boxer, the person you know as Boxer?

6 A. Do you mean whether I would agree with that? Is that
7 what you are saying?

8 Q. Yes.

9 A. It is possible.

10 Q. Now, as part of your cooperation agreement with the
11 government, you agreed not to tell anybody that you were
12 cooperating with the government without the government's
13 consent. Correct?

14 A. Yes.

15 Q. And that is something that you really wouldn't want
16 to tell anybody anyway. Right?

17 A. Yes.

18 Q. Right. So even if the government didn't tell you
19 that, it is not something that you would go to jail and be
20 bragging about. Right?

21 A. No.

22 Q. And you were confident that you would be able to lie
23 to people about whether you were cooperating. Right?

24 A. Depending. Depend on the situation that I am in.

25 Q. You are not confident about your ability to lie about

1 your cooperating?

2 A. You mean, like telling other people that I am
3 cooperating?

4 Q. I mean, telling people you are you not cooperating.

5 A. Yes. Maybe I have had to lie about it.

6 Q. And you had to lie about it to people who were
7 suspicious about you. Right?

8 A. Yes.

9 Q. And you had to do so convincingly. Right?

10 A. They haven't asked me directly just like that. Only
11 that when the subject is mentioned, I was always clean.
12 That's it.

13 Q. You were always clean, meaning you were always saying
14 that you were not cooperating or going to cooperate?

15 A. The only thing was that they didn't have suspicions
16 about me because I have gone down to the states and that
17 was my case so they have no suspicion.

18 (There was a pause in the proceedings.)

19 A. I had gone down to the state, to the state jail, so
20 they had no suspicions about me.

21 Q. How long have you been in the federal jail?

22 A. I just came back, about a month ago.

23 Q. From the state prison?

24 A. Yes.

25 Q. That was the Bare Hill Correctional Facility?

1 A. Yes.

2 Q. Nobody up there ever asked you or accused you of
3 being a cooperator?

4 A. Not directly like that.

5 Q. Did they do so indirectly?

6 A. Well, some people say things but they never said
7 anything directly in front of me, personally.

8 Q. What about in the federal jail? Have you been
9 accused of being a cooperator?

10 A. It is the same thing. They say things in jail, but
11 they don't ask you directly because they have no evidence
12 about anything.

13 Q. You knew that if you were asked directly, you would
14 have to say -- you would have to lie about it.

15 A. Maybe yes, for my safety.

16 Q. For your safety and because the government required
17 you to.

18 MR. DURHAM: Objection.

19 THE COURT: Sustained. Asked and answered.

20 BY MR. LEVINE:

21 Q. So you were confident that for your own interests you
22 would be able to lie convincingly?

23 A. Could you please explain the question in a different
24 way?

25 Q. Yes. If it were in your interest, you were able to

1 lie about that convincingly?

2 A. Yes, sir. As I told you, also for my sake.

3 Q. Now, when the FBI came to your house to arrest
4 Demente, they spoke to you. Yes?

5 A. Yes.

6 Q. And they asked you questions. Correct?

7 A. Yes.

8 Q. And you lied to them?

9 A. Yes.

10 Q. They asked you whether you were MS-13?

11 A. Yes.

12 Q. And you told them no?

13 A. Yes.

14 Q. Because at that particular time in speaking to the
15 FBI it was in your interest to lie to the FBI. Correct?

16 A. I didn't want to get in trouble. That was all.

17 Q. Right. So it was in your best interest to lie to the
18 FBI at that time?

19 A. You can say so.

20 Q. Now, you also said yesterday that when the FBI asked
21 you that, you actually wanted out of the gang.

22 A. Yes.

23 Q. You didn't tell the FBI that. Right? At that time.

24 A. No, because they weren't going to understand my
25 situation.

1 Q. You didn't say to the FBI: *Yes, I'm in the MS-13. I*
2 *can help you out and you can help me out?*

3 A. I did not.

4 Q. Now with respect to the David Sandler and Aaron Galan
5 incident.

6 After setting up David Sandler to be killed, did
7 you actually get more respect from the gang?

8 A. My clique was not here so practically what happened
9 was that they wanted to prove whether I was okay.

10 Q. Did you get respect? Did they call you sir? Did you
11 get a better parking spot?

12 MR. DURHAM: Objection.

13 THE COURT: Sustained.

14 BY MR. LEVINE:

15 Q. Did you get more respect from them somehow?

16 MR. DURHAM: Objection. Asked and answered.

17 THE COURT: I will allow it.

18 A. I didn't hang out with them in particular. And
19 besides, I got arrested a week later. And besides, I got
20 away from all that.

21 BY MR. LEVINE:

22 Q. Okay. You pleaded guilty before Judge Bianco a long
23 time ago. Right?

24 A. Yes.

25 Q. Was that November 21, 2011?

1 A. Yes.

2 Q. And didn't you tell Judge Bianco at that time:

3 *I participated in the murder of David Sandler*
4 *and the attempted murder of John Doe 8 in order to*
5 *maintain and increase my position in MS-13, and afterwards*
6 *I was given more respect from other MS-13 members because*
7 *I put in work for the gang?*

8 Did you say that to Judge Bianco at that time?

9 THE INTERPRETER: Counsel, could you please go
10 more slowly so that I can take notes? Or give me a copy?

11 MR. LEVINE: I will go more slowly.

12 BY MR. LEVINE:

13 Q. *I participated in the murder of David Sandler and the*
14 *attempted murder of John Doe No. 8 in order to maintain*
15 *and increase my position in MS-13, and afterwards I was*
16 *given more respect from other MS-13 members because I put*
17 *in work for the gang.*

18 Did you say that at that time? Yes or no?

19 A. I said that I pled guilty for the killing.

20 Q. And as a requirement, the government required you to
21 also say that it was for the purpose of increase -- of
22 getting respect, and that you in fact got more respect.
23 Right?

24 A. Yes.

25 What happens is that every time something like

1 that happens, that is the purpose of the gang.

2 Q. The question was, the government required you to say
3 that at the time that you pleaded guilty.

4 A. It's not required. Practically, that is what
5 happens.

6 Q. Okay. So the agreement that you had with the
7 government didn't require you to say that?

8 A. It didn't specifically say that.

9 MR. DURHAM: Your Honor, may we approach?

10 THE COURT: Yes.

11 (Discussion ensued at sidebar as follows.)

12 MR. DURHAM: Your Honor, I think we are in a
13 somewhat difficult area here.

14 Counsel is referring to the government requires
15 you to say that. This is a requirement of the statute.
16 It is not a requirement of the government. It is an
17 element of the offense.

18 THE COURT: I understand.

19 There are two things going on here. One is, he
20 did say today that he doesn't get any respect, and he did
21 say at the time of the plea that it was for respect. So I
22 think all that is legitimate. But you are starting to get
23 into what is required and it is the law that requires
24 that.

25 MR. LEVINE: I will try to do it from a

1 different angle.

2 MR. DURHAM: I didn't object initially. I
3 understand that point was made. But now it is getting
4 into a matter of what the court or the government requires
5 or the law requires.

6 THE COURT: The law requires. It is not the
7 government.

8 MR. LEVINE: Right. Okay. I will try to do it
9 from a different --

10 THE COURT: I think I covered it. All right.

11 MR. LEVINE: I will see.

12 (Discussion at sidebar was concluded.)

13 BY MR. LEVINE:

14 Q. Mr. Sosa, it was your understanding at the time you
15 pleaded guilty, wasn't it, that if you did not say that,
16 your guilty plea would not be accepted? Right?

17 There are a lot of words there. Yes or no?

18 A. Yes --

19 Q. Yes or no?

20 MR. DURHAM: Objection.

21 THE COURT: No. If he said something, you
22 should translate what the witness said.

23 A. Yes, you could say so, because that is part of what
24 happened.

25 BY MR. LEVINE:

1 Q. And if you didn't say it, you wouldn't plead
2 guilty -- your plea would not have been accepted. Yes or
3 no?

4 A. No.

5 Q. And then if the plea wasn't accepted, there wouldn't
6 be any cooperation agreement. Right?

7 A. No.

8 THE COURT: Do you want to clarify the answer.

9 BY MR. LEVINE:

10 Q. When you say no, you mean I'm correct?

11 A. Yes, that if my, the acceptance of my plea, my plea
12 would not be accepted. Yes, I said you were correct.

13 Q. Okay. Thank you.

14 Still talking about now the David Sandler
15 incident. You and some others made a plan to kill
16 David Sandler. Right?

17 A. Yes.

18 Q. And you made that plan in the car?

19 A. Yes.

20 Q. And then you personally called Mr. Sandler?

21 A. Yes.

22 Q. And you used a ruse to get him to come to meet with
23 you?

24 A. Yes.

25 Q. That was another lie at that point. Right?

1 A. Another lie related to the victim.

2 Q. Yes. So that was a lie you told to David Sandler at
3 that time. Right?

4 A. Yes.

5 Q. And you convinced Mr. Sandler that you really wanted
6 to buy marijuana from him?

7 A. Yes.

8 Q. And at that time it was in your interest to convince
9 Mr. Sandler that you were telling the truth, even though
10 you were lying?

11 A. Yes, because that was part of the plan.

12 Q. And the plan was for you then to be the lookout after
13 that. Correct?

14 A. Yes.

15 Q. You were not going to be the shooter?

16 A. No.

17 Q. And in fact you were not the shooter.

18 A. No.

19 Q. And you didn't tell David Sandler to bring anybody
20 else with him.

21 A. No.

22 Q. You didn't know David Sandler was going to bring
23 anybody with him.

24 A. No.

25 Q. You were very surprised when you saw David Sandler

1 approaching with somebody else. Correct?

2 A. Yes.

3 Q. You had never seen that other person before in your
4 life. Right?

5 A. No.

6 Q. It is correct?

7 A. Yes, I haven't ever seen him.

8 Q. And you had no plan then when you were in the car to
9 kill that man. Right?

10 A. No.

11 Q. I'm sorry. I have to stop using *right* in my
12 questions.

13 You mean I'm correct?

14 A. Yes.

15 Q. And so there was no discussion about killing that
16 man.

17 A. No.

18 Q. And you didn't tell anybody to kill that man.

19 A. No.

20 Q. You didn't request that anybody kill that man.

21 A. No.

22 Q. You didn't take the gun and try to kill that man,
23 yourself.

24 A. No.

25 Q. You, personally, didn't do anything towards that

1 person.

2 A. No.

3 Q. And what happened with him -- that is, Mr. Galan that
4 we are talking about; the other person. Right?

5 A. Yes.

6 Q. And what happened with him, happened very fast.

7 A. Yes.

8 Q. In fact you were still looking at Mr. Sandler and
9 then turned around and saw that somebody was chasing
10 Mr. Galan away. Right?

11 A. Yes.

12 Q. And you didn't go over and assist that person in
13 shooting Mr. Galan.

14 A. No.

15 Q. And you personally had no intention that Mr. Galan
16 get killed. Right?

17 A. No.

18 Q. That's correct?

19 A. Yes, that's right.

20 Q. When you pleaded guilty in this case, to the federal
21 case, you pleaded guilty to the charge of attempted murder
22 of Mr. Galan. Right?

23 A. Yes.

24 Q. And the government required that that be one of the
25 counts that you plead guilty to under the terms of the

1 cooperation agreement.

2 A. Well, but the problem was that that charge, I already
3 had that charge and I knew I was involved in that, so
4 that's why I pled guilty.

5 Q. But you also were told that to be guilty of that
6 charge you had to have the intent to kill Mr. Galan.
7 Right?

8 MR. DURHAM: Your Honor, may we approach again?
9 I apologize.

10 THE COURT: Yes.

11 (Discussion at sidebar ensued as follows.)

12 MR. DURHAM: Your Honor, I don't claim to be a
13 mind reader, but I think I know where Mr. Levine is going.
14 I understand it but we are getting into complicated areas
15 of law here in terms of Pinkerton liability and reasonable
16 foreseeability.

17 This witness obviously has a minimal education.
18 He didn't go to law school. And these are concepts that
19 many lawyers don't fully understand. So I would object to
20 this line of questioning.

21 THE COURT: I have to say I'm concerned. And
22 I'm not suggesting that either defense counsel is doing
23 anything wrong in their cross. I understand the purpose
24 of it. But I was concerned yesterday and I'm concerned
25 today that the jury is being left with the impression that

1 there is no such as aiding and abetting and he pled guilty
2 to something he didn't do and that the government is
3 alleging that he discharged the weapon because he pled
4 guilty or there was a charge of 924C and I'm worried that
5 the jury is getting very confused over this whole issue.

6 MR. LEVINE: The problem with that is -- I will
7 address both of your concerns -- there was a requirement
8 regardless of the aiding and abetting theory. The
9 requirement is that he had the intent to kill. The aiding
10 and abetting goes to whether he actually committed it or
11 not but he has to have that mens rea to be guilty of
12 attempted murder.

13 THE COURT: But if he is walking down the street
14 and they kill David Sandler and he's standing next to him,
15 he can be guilty as an aider and abettor even though he
16 had no intent.

17 MR. LEVINE: No, if he doesn't have the intent,
18 he can't be guilty of it.

19 THE COURT: He knows that the shooter has a gun,
20 can be killed, is he guilty of --

21 MR. LEVINE: No. He has to have the intent that
22 Galan be killed to be guilty of attempted murder of
23 Mr. Galan.

24 MR. DURHAM: Mr. Ortega had the intent to kill
25 and he is aiding and abetting that; therefore, he has the

1 intent. He is also guilty under a Pinkerton theory on
2 that.

3 And if counsel continues on this line, we are
4 going to request that the court give the jury an
5 instruction at this time on aiding and abetting liability
6 as well as conspiracy law.

7 THE COURT: This is irrelevant to him. You find
8 out what his understanding is. I am concerned that the
9 jury is a bit confused over it. I'm going to tell them
10 that they are going to get an instruction on what the law
11 is, at the end of the case, regarding the elements of the
12 crime and aiding and abetting. I've allowed these
13 questions to be asked of the witnesses with that
14 understanding, but I don't know how much more you want to
15 do on this. We have been through this for a long time
16 now.

17 MR. LEVINE: We haven't really been through this
18 for so long, judge. The point is, when he said that he
19 intentionally, that he aided in the killing of Mr. Galan
20 and did so with the intent that Mr. Galan be killed, he
21 wasn't guilty of the intentional attempted murder of Mr.
22 Galan, and because he had to say it, that was part of the
23 plea.

24 THE COURT: That is argument. You may ask him
25 these questions, about what he intended at the time. You

1 brought out what he pled guilty to, the jury is going to
2 hear the instructions. Make whatever argument you want
3 but I don't want to have to try to explain what the law is
4 in this area. It's going to confuse the jury more.

5 What more is there to ask him on this?

6 MR. LEVINE: That he was told, you read it to
7 him, you told him at the time that he had to have the
8 intent to kill Mr. Galan and he said yes, I understand
9 that, and then later he even tried, he even balked at it
10 during the plea, he even said --

11 THE COURT: You can read to him what he said at
12 the plea, if you want, but I don't want to have him try to
13 explain what the law is on this, what he is required to
14 plead to or not plead to.

15 If he said something at the plea that suggested
16 he had a specific intent, you can read that to him, but I
17 don't want you to ask him what the government required. I
18 don't want that question. Okay?

19 MR. LEVINE: Judge --

20 THE COURT: You have already asked him whether
21 the government required him to plead guilty to the count.
22 So we have already covered that.

23 MR. LEVINE: Okay.

24 (Discussion at sidebar was concluded.)

25 THE COURT: Members of the jury, let me explain

1 something to you because I don't want to have any
2 confusion on this issue.

3 I have allowed questioning of the witness as to
4 what his understanding is of what he pled guilty to. I
5 want to say, with respect to what the law is, what the
6 elements are for the particular crimes, you will hear all
7 that at the end of the case, what the law is on the
8 particular statutes that are at issue here.

9 But on what conspiracy is, what aiding and
10 abetting is, what I say as to the law is what controls.
11 If the witness starts describing what their understanding
12 is and what they pled guilty to, you can consider that to
13 assess the credibility of their testimony. But as to what
14 the law is on a particular charge, you have to listen to
15 what I tell you at the end of the case.

16 Thank you.

17 MR. LEVINE: Sorry. I'm just looking for
18 something.

19 BY MR. LEVINE:

20 Q. Mr. Galan, at the time that you pleaded guilty --

21 THE COURT: You mean Mr. Sosa.

22 MR. LEVINE: I'm sorry. Yes, Mr. Sosa. Thank
23 you, judge.

24 BY MR. LEVINE:

25 Q. Mr. Sosa, at the time that you pleaded guilty,

1 Judge Bianco informed you of the nature of the charges.

2 Correct?

3 A. Yes.

4 Q. And didn't Judge Bianco say to you, with respect to
5 the charge Count 47, which was the charge of the attempted
6 murder of Mr. Galan, didn't he say:

7 *With respect to Count 47, that you knowingly and*
8 *intentionally attempted to murder John Doe No. 8, and they*
9 *have to prove each of those same elements as well, except*
10 *this was an attempt so they have to prove Section 110 of*
11 *New York Penal Law as well, which says a person is guilty*
12 *of an attempt to commit a crime when, with the intent to*
13 *commit the crime, he engages in conduct with intent to*
14 *effect the commission of the crime --*

15 THE INTERPRETER: I'm sorry, sir. You have to
16 break that into two parts.

17 MR. DURHAM: I object to the question, judge.

18 THE COURT: This is exactly what I don't want
19 to do. I don't want to go through -- you are now giving
20 him a portion of what I said to him regarding the law in
21 the area, and the jury is going to hear the law at the end
22 of the case.

23 If you want to go into what he allocuted to
24 regarding the crime, I will permit that. But I don't want
25 him to be questioned regarding my explanation of the law.

1 Okay?

2 MR. LEVINE: Okay, judge.

3 THE COURT: It is not a complete version of what
4 the law is. It's a summary for purposes of the guilty
5 plea. I don't go through all the contents of aiding and
6 abetting, for example, and it's going to be confusing to
7 both him and to the jury.

8 MR. LEVINE: Note my exception.

9 THE COURT: You can ask him any question you
10 want regarding what he said. Okay?

11 BY MR. LEVINE:

12 Q. You told the judge at the time, that you understood
13 that that crime, attempted murder of Mr. Galan, meant that
14 you intended to kill Mr. Galan. Right? Or you intended
15 that he be killed. Right?

16 A. Yes. I pled guilty to that.

17 Q. And if you didn't plead guilty to that charge, you
18 wouldn't get the cooperation agreement.

19 MR. DURHAM: Objection. Asked and answered.

20 THE COURT: Sustained.

21 BY MR. LEVINE:

22 Q. Now, by the way, when you pleaded guilty, you were
23 under oath. Correct?

24 A. Yes.

25 Q. Now, there came a time that you learned of the murder

1 of Baby Blue?

2 A. Yes.

3 Q. And there was some talk among the MS-13 members
4 about it?

5 A. Yes.

6 Q. And you came to learn that the green light had been
7 put on Boxer. Correct?

8 MR. DURHAM: Objection.

9 THE COURT: Overruled.

10 A. Not at the time.

11 BY MR. LEVINE:

12 Q. When did you learn it?

13 A. I was already in the process of being in jail and
14 everything when people were talking about that.

15 Q. You came from El Salvador, you said, when you were
16 about 15 years old. Right?

17 A. Yes.

18 Q. And MS-13 members in El Salvador, according to you,
19 communicate with MS-13 members in Long Island.

20 A. Yes. Through all the countries.

21 Q. You told us yesterday that there was a green light
22 for you in El Salvador because you left without
23 permission.

24 A. Yes. They do put a green light on me because I left
25 without permission.

1 Q. Well, did they or didn't they?

2 A. It is a no, because I never spoke to them again.

3 Q. Well, a green light would have required or allowed
4 any other MS-13 member to kill you on sight. Right?

5 A. That's right.

6 Q. And that is really the only time that MS-13 members
7 are allowed to kill other MS-13 members. Right?

8 A. That's right.

9 Q. Any other time that happens, that a MS-13 member
10 kills another MS-13 member without there being a green
11 light on that member, that is really those people acting
12 on their own. Right?

13 MR. DURHAM: Objection.

14 THE COURT: Sustained as to form.

15 BY MR. LEVINE:

16 Q. When a MS-13 member kills a fellow MS-13 member
17 without there being a green light on that MS-13 member,
18 then the killer is not doing something sanctioned by the
19 gang.

20 MR. DURHAM: Objection.

21 THE COURT: No. I will allow that.

22 A. That's right. Unless he has a reason.

23 BY MR. LEVINE:

24 Q. Well, the reason has to be approved by the
25 higher-ups. Right?

1 A. I think it can be approved by a clique leader.

2 Q. And if there was no green light on the member who got
3 killed, then the people who killed that person can have a
4 green light put on themselves. Right?

5 A. That's right.

6 Q. So rather than enhance that person, that killer's
7 position within MS-13, it actually could result in his own
8 death. Right?

9 A. That's right.

10 Q. Now, when you came to New York, you came directly to
11 Long Island?

12 A. Yes.

13 Q. You had a brother who was living on Long Island at
14 the time. Right?

15 A. Yes.

16 Q. Is that the brother who paid the coyote to get you
17 here?

18 A. Yes.

19 Q. Did that brother live in Brentwood at the time?

20 MR. DURHAM: Objection.

21 THE COURT: Why don't you approach, Mr. Levine.
22 (Discussion at sidebar ensued as follows.)

23 THE COURT: What is the relevance of where the
24 brother lives?

25 MR. LEVINE: Because the brother was living in

1 Brentwood and the MS-13 was in Brentwood and the brother
2 would obviously know it. And the fact that this witness
3 moved to Brentwood from El Salvador thinking there could
4 be a green light on him by MS-13 I think raises critical
5 issues.

6 MR. DURHAM: I object on relevancy grounds as
7 well as 403. He has made his point about the green light
8 with respect to this witness independently. We don't need
9 to bring his brother into it.

10 MR. LEVINE: That is a different green light
11 issue. One green light issue goes to the charge against
12 my client. This one is about this person's credibility,
13 what his real motivation was for coming here.

14 THE COURT: I understand that. But what does
15 the brother, explain to me, where the brother was living
16 at the time, what does that have to do with?

17 MR. LEVINE: The brother would know that MS-13
18 was prominent in Brentwood, and this witness moved to
19 Brentwood.

20 MR. DURHAM: That inquires about the brother's
21 state of mind.

22 THE COURT: Why don't you ask him whether he
23 knew that the MS-13 was in Brentwood.

24 MR. LEVINE: I thought he would have to have a
25 foundation for knowing.

1 MS. MACEDONIO: I think he already testified
2 that there was MS-13, the relevance --

3 MR. LEVINE: Did he know before he got here.

4 THE COURT: Did you understand before you got
5 here, at the time you arrived.

6 MR. LEVINE: Okay.

7 (Discussion at sidebar was concluded.)

8 BY MR. LEVINE:

9 Q. Mr. Sosa, before you arrived in Brentwood, you were
10 aware that MS-13 was in Brentwood. Right?

11 A. Not exactly.

12 Q. What does *not exactly* mean? Does it mean you knew?
13 You didn't know at all?

14 A. I had no idea.

15 Q. So while you were in El Salvador, you had no idea of
16 any communications then between MS-13 in El Salvador and
17 MS-13 in Brentwood?

18 A. Not directly to Brentwood. I knew there was
19 communication to this country.

20 Q. And MS-13 is in different places within this country.
21 Right?

22 A. Right.

23 Q. So you didn't know anything about any actual
24 communication between MS-13 in El Salvador and the MS-13
25 in Long Island.

1 A. What happens is that each clique had his own rule and
2 had its own communications. So my own clique had
3 communication with certain areas or places, but I didn't
4 know about other cliques or what they communicated with.

5 Q. When you came to -- withdrawn.

6 You said -- I believe yesterday, it could have
7 been the day before -- that there came a time that you met
8 an MS-13 member in the mall. Right?

9 A. That's right.

10 Q. And that was in 2008?

11 A. Approximately 2008.

12 Q. And you had said in court here that that person was
13 known to you as Gato?

14 A. Yes.

15 Q. Back on July 29, 2010, you were in custody. Correct?

16 A. Yes.

17 Q. And you had a conversation with Agents Lopez and
18 Negro?

19 A. I'm not sure about the names.

20 Q. But there were two agents that you had a conversation
21 with on or about July 29, 2010?

22 A. Yes, I had some conversations.

23 Q. And you told them about the time that you met an
24 MS-13 member in the mall in 2008. Right?

25 A. I believe so. I'm not totally sure. I believe so.

1 Q. Didn't you tell them that the person who recognized
2 you when you met in the mall in 2008 went by the name
3 Danger?

4 A. That was not the date that they brought me in federal
5 custody.

6 Q. I didn't ask whether it was the date they brought you
7 into federal custody. But you were in custody already?

8 A. Yes. But I had just been brought into federal
9 custody so I was getting things back to my memory at that
10 point. I wasn't totally sure about the people.

11 Q. Well, would you agree that back in July -- withdrawn.
12 July 29, 2010, was the first time you gave a
13 statement to them. Right?

14 A. I think so.

15 Q. And how long had you already been in custody up until
16 that point?

17 A. Could you repeat the date, please?

18 Q. July 29, 2010.

19 A. I was in jail already but I was in the state.

20 Q. Well, the question really is, didn't you tell them on
21 July 29, 2010, that the person you met in the mall in 2008
22 went by the name Danger?

23 A. Yes. But I also remember as well that at that same
24 moment I wasn't totally sure. And I said that, too.

25 Q. Okay. And you exchanged numbers at that time with

1 the person you met in the mall in 2008?

2 A. Yes.

3 Q. And the person you met in the mall in 2008 you said
4 had recognized you from El Salvador. Right?

5 A. Yes.

6 Q. And you didn't know for sure whether or not there was
7 actually a green light on you from El Salvador. Right?

8 A. That's right.

9 Q. You gave that person who you met in the mall, who
10 knew you from El Salvador, your real phone number?

11 A. Yes, because when he asked me, he was already
12 dialing it.

13 Q. Okay. Well, you mean he didn't know your phone
14 number before you gave it to him. Right?

15 A. No.

16 Q. And I believe it was your testimony that you didn't
17 start actually hanging out, though, with MS-13 until
18 January of 2010.

19 A. Yes.

20 Q. So during those two years, from the time you met that
21 person in the mall until January 2010, you committed no
22 crimes with MS-13?

23 A. No.

24 Q. And nobody forced you to join MS-13?

25 A. I was already a member.

1 Q. Okay. Did they know you were a member?

2 A. That's what I was saying, that that's why this guy in
3 the mall recognized me, because he knew I was a member
4 from El Salvador.

5 Q. Okay. And then even though he knew you were a member
6 from El Salvador and even though you exchanged numbers,
7 you were not engaging in any activities with MS-13 from
8 2008 to 2010 in Long Island?

9 MR. DURHAM: Objection.

10 THE COURT: Sustained.

11 BY MR. LEVINE:

12 Q. Now, you told us yesterday that there is something
13 called reporting in. Right?

14 A. Right.

15 Q. And reporting in is when you basically transfer from
16 El Salvador MS-13 to an MS-13 here in the US. Right?

17 A. Well, the MS-13 is just one.

18 THE COURT: Mr. Levine, I think one of the
19 jurors needs a break, so we're going to take the morning
20 break. Take a 15-minute break.

21 Don't discuss the case.

22 (The following ensued in the absence of the jury
23 at 11 am.)

24 THE COURT: Would everyone be seated.

25 How much more do you have, Mr. Levine?

1

MR. LEVINE: Not much.

2

THE COURT: Okay. Let's take our break.

3

(Recess taken at 11 am.)

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1 (After recess the following occurred.)

2 CROSS EXAMINATION (Continued)

3 BY MR. LEVINE:

4 Q Mr. Sosa, under the terms of your cooperation
5 agreement with the government, whether or not you have
6 told the truth at this trial is not determined at all by
7 defense counsel, right?

8 THE INTERPRETER: Whether or not?

9 Q Whether or not you told the truth at the trial is not
10 determined by the defense lawyers?

11 A No.

12 Q No. That's correct, right?

13 A Yes.

14 Q It's not even determined by the judge?

15 A No.

16 Q It's determined solely by the government, the lawyers
17 for the government?

18 A I believe so.

19 Q And only the lawyers for the government have the
20 authority to say whether you should get the benefits of
21 the agreement?

22 MR. DURHAM: Objection.

23 THE COURT: Overruled.

24 A I figure so.

25 MR. LEVINE: I have nothing further.

1 THE COURT: Redirect?

2 MR. DURHAM: May I have a moment, your Honor?

3 (There was a pause in the proceedings.)

4

5 REDIRECT EXAMINATION

6 BY MR. DURHAM:

7 Q Mr. Sosa, who sentences you?

8 A Judge Bianco.

9 Q Judge Bianco who sat here and heard all of the
10 testimony?

11 A Yes.

12 Q And earlier this morning Mr. Levine asked you some
13 questions about your cooperation. Did you tell any other
14 inmate in jail that you were cooperating?

15 A No.

16 Q Why not?

17 A Because I didn't believe it he would be safe for me.

18 MR. DURHAM: Your Honor, may I approach?

19 THE COURT: Yes.

20 BY MR. DURHAM:

21 Q I'm showing you what is marked as defense exhibits,
22 or excuse me -- well Defense Exhibit Ortega A and Ortega
23 B.

24 Do you recognize those documents?

25 A Yes.

1 Q When you were interviewed in connection with that
2 case --

3 MR. LONDON: I can't understand the question.

4 BY MR. DURHAM:

5 Q When you were interviewed about that case did the
6 detective speak Spanish?

7 A No.

8 Q And before you signed those documents were they read
9 to you in Spanish?

10 A No.

11 Q Now, yesterday afternoon and earlier today both
12 Mr. London and Mr. Levine asked you a lot of questions
13 about the law. How far did you go in school?

14 MR. LONDON: Objection.

15 THE COURT: Restate the question.

16 BY MR. DURHAM:

17 Q Mr. Sosa, how far did you go in school?

18 A Up to eighth grade. But that was in my country.

19 Q Did you ever study law?

20 A No.

21 Q Did you go to law school at all?

22 A No.

23 Q Do you know what *Pinkerton liability* is?

24 MS. MACEDONIO: Objection.

25 MR. LEVINE: Objection.

1 THE COURT: Sustained.

2 BY MR. DURHAM:

3 Q Now, what charges did you plead guilty to?

4 A For the killing of David Sandler and the attempted
5 killing of the other victim.

6 Q And the actual charges, was that murder in aid of
7 racketeering?

8 A Yes, that is the way it's in the papers.

9 Q And attempted murder in aid of racketeering?

10 A Yes.

11 Q And what is the mandatory minimum sentence for murder
12 in aid of racketeering?

13 A The minimum sentence you mean?

14 Q Yes.

15 A I was assured that I was supposed to get life for the
16 charges.

17 Q That was the most serious charge you were charged
18 with, correct?

19 A Yes.

20 Q And why did you plead guilty?

21 A Because I know that I'm guilty because I was involved
22 in what happened.

23 Q You helped cause David Sandler's death?

24 A Yes.

25 Q You helped in the attempted murder of Aaron Galan?

1 A Yes.

2 Q Did you make a plan to kill Mr. Sandler?

3 A A plan was cooperated with the members of the gang.

4 Q Would else did you make the plan with?

5 A You want the name?

6 Q Yes.

7 A With Perdidi and Silencio was there, and Michichi who
8 was driving.

9 Q Silencio being the defendant Carlos Ortega?

10 A Yes.

11 Q Did you call the victim?

12 A Yes.

13 Q And did you see the two shootings?

14 A Yes.

15 Q Who shot David Sandler?

16 A Silencio.

17 Q Who shot Aaron Galan?

18 A Silencio.

19 Q Now the murder of David Sandler and the attempted
20 murder of Aaron Galan, what was the purpose of those
21 crimes?

22 MS. MACEDONIO: Objection.

23 This question has been asked answered on
24 numerous occasions.

25 THE COURT: It was asked on cross. I'll allow

1 the question on the issue of purpose.

2 A The purpose was for us to show that we were okay.
3 For us to prove ourselves. And also the purpose of the
4 gang, which is to be respected. And like that you have
5 respect of all the members.

6 Q Did you prove yourself?

7 A Yes.

8 Q And finally, you were asked a number of questions
9 about lying in different situations.

10 A Yes.

11 Q Mr. Sosa, is it in your best interest today to lie or
12 to tell the truth?

13 MS. MACEDONIO: Objection.

14 THE COURT: Overruled.

15 A I know that I'm guilty and my life is on the line. I
16 am not willing to tell any lies. I came here to tell the
17 truth.

18 BY MR. DURHAM:

19 Q What happens if you lie here today?

20 MR. LEVINE: Objection, judge, for the
21 government to --

22 THE COURT: Overruled.

23 A The agreement that I have with the government would
24 be shattered, and I am supposed to get life for the
25 charges.

1 MR. DURHAM: No further questions.

2 THE COURT: Any recross?

3

4 RECROSS-EXAMINATION

5 BY MR. LONDON:

6 Q Good morning, Mr. Sosa.

7 Did you plead guilty pursuant to the cooperation
8 agreement?

9 A Yes.

10 Q And did you do that in the hope of getting a reduced
11 sentence?

12 A Yes.

13 Q Now with respect to the two exhibits before you. Do
14 you know what I'm referring to?

15 THE COURT: Just so the record is clear, it's
16 Ortega Exhibits A and B.

17 MR. LONDON: Thank you, judge.

18 A Yes. I know them.

19 BY MR. LONDON:

20 Q Did you sign those documents?

21 A Yes.

22 Q And are they detailed statements of what you did in
23 committing a robbery and a burglary?

24 A Yes.

25 Q Did you tell anyone before you signed them that you

1 didn't understand them?

2 A Yes. I told them that I didn't speak perfect
3 English.

4 Q That isn't my question.

5 My question is, did you tell anyone before you
6 signed them that you didn't understand what you had
7 written in the statement?

8 A Yes.

9 Q And did they make a note of it and make corrections
10 for you?

11 A They picked up the paper. They started looking at
12 them and they told me that everything was fine.

13 Q Did you look them over?

14 A I saw them, but I can not understand exactly what it
15 says. I can not read English like that.

16 Q So you're saying that you just signed the statement
17 under oath?

18 They gave you an oath, didn't they, that you had
19 to tell the truth?

20 A It was the first time that I got arrested. I didn't
21 know anything about that. I didn't know how it was.

22 Q You didn't understand what an oath to tell the truth
23 means?

24 A The problem was that nobody was explaining to me in
25 Spanish. I couldn't understand exactly what they were

1 saying.

2 Q That isn't my question, Mr. Sosa. My question is,
3 Did you understand what an oath to tell the truth means?

4 A Not at that moment.

5 Q So when someone said, *Do you swear to tell the truth*,
6 you didn't understand that?

7 A At that moment I didn't speak English. I didn't
8 understand English like that.

9 Q You did not understand what it means to tell the
10 truth?

11 MR. DURHAM: Objection.

12 THE COURT: Asked and answered.

13 BY MR. LONDON:

14 Q And in spite of the fact that you didn't understand
15 the oath to tell the truth, and what was contained in the
16 two statements, you signed them?

17 MR. DURHAM: Objection.

18 THE COURT: I'll allow it. Overruled.

19 A Yes.

20 BY MR. LONDON:

21 Q Mr. Sosa, isn't it a fact that you're lying to this
22 jury about that?

23 MR. DURHAM: Objection.

24 THE COURT: Sustained.

25 Q Mr. Sosa, isn't it a fact that you lied to this jury

1 about your role in the robbery?

2 MR. DURHAM: Objection.

3 THE COURT: Sustained.

4 BY MR. LONDON:

5 Q Isn't it a fact that you're lying to this jury about
6 your role in the burglary?

7 MR. DURHAM: Objection, your Honor.

8 THE COURT: Sustained.

9 MR. LONDON: No further questions.

10

11 RECROSS-EXAMINATION

12 BY MR. LEVINE:

13 Q Mr. Sosa, you said you pleaded guilty to both those
14 charges because you are guilty?

15 MR. DURHAM: Your Honor, could he be more
16 specific as to which charges he is referring?

17 BY MR. LEVINE:

18 Q You only pleaded guilty to two charges in Federal
19 Court, right?

20 A Yes.

21 Q Murder in aid of racketeering and attempted murder in
22 aid of racketeering?

23 A Yes.

24 Q Not conspiracy, but the actual murder and attempted
25 murder, correct?

1 A Yes.

2 Q And you knew right after David Sandler was killed
3 that you were guilty of the murder of David Sandler,
4 correct?

5 MR. DURHAM: Objection.

6 THE COURT: Overruled.

7 A Yes.

8 BY MR. LEVINE:

9 Q And you didn't go and turn yourself in because you
10 knew you were guilty, correct?

11 MR. DURHAM: Objection.

12 THE COURT: Overruled.

13 A No.

14 BY MR. LEVINE:

15 Q And when the FBI came to your house and asked you
16 whether you were MS-13, you didn't say, Yes. And by the
17 way, I killed David Sandler?

18 MR. DURHAM: We object, your Honor, scope.

19 THE COURT: I'll allow it. Overruled.

20 A No.

21 BY MR. LEVINE:

22 Q And when you first got arrested on the federal
23 matter, you didn't ask to plead guilty right away, right?

24 A No.

25 Q In fact you told us that you started out fighting the

1 case, right?

2 MR. DURHAM: Objection.

3 THE COURT: Overruled.

4 A Yes.

5 BY MR. LEVINE:

6 Q And you only pleaded guilty when it turned out that
7 there was going to be a benefit given to you by the
8 government, right?

9 A I pled guilty because I saw that the case was hard,
10 and I wanted to come clear about the things that I was
11 being accused of. Because I was not guilty in full of
12 everything that they were accusing me of.

13 Q You weren't guilty of everything they said you were
14 guilty of?

15 A When I started fighting the case I wasn't guilty of
16 everything they were saying.

17 Q But you said in the beginning of the case you weren't
18 guilty of everything they accused you of. At the end of
19 your case were you guilty of everything they accused you
20 of?

21 A Yes. That's why I pled guilty.

22 Q And you pleaded guilty only with the cooperation
23 agreement, right?

24 A Yes.

25 MR. LEVINE: I have nothing further.

1 REDIRECT EXAMINATION

2 BY MR. DURHAM:

3 Q Mr. Sosa, when you say you weren't guilty of
4 everything, what are you referring to?

5 A I'm referring to the fact that I didn't shoot the
6 weapon that killed David Sandler.

7 Q Who shot that weapon?

8 A Silencio.

9 MR. DURHAM: No further questions.

10 THE COURT: Anything further?

11 The witness is excused.

12 The next witness.

13 MR. DURHAM: Your Honor, the government calls
14 Mark Moorman

15 THE COURT: Step up to the witness stand, sir,
16 and remain standing once you get there.

17

18 **MARK MOORMAN**

19 called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE COURT: Please state your name and spell it
22 for the record.

23 THE WITNESS: Mark Moorman, M-O-O-R-M-A-N.

24 THE COURT: Okay, I'll just ask you,
25 Mr. Moorman, to pull the microphone closer to you so

1 everyone can hear you. Okay? Thank you.

2

3 DIRECT EXAMINATION

4 BY MR. DURHAM:

5 Q Good morning, sir.

6 A Good morning.

7 Q Barely.

8 A Barely.

9 Q Let me direct your attention to February 17, 2010.
10 Do you remember that day?

11 A Yes.

12 Q And where were you that day?

13 A Most of the day I was at the KK Athletics.

14 Q And why were you there?

15 A Along with a soccer tournament I'm a board member of,
16 -- a local soccer club. There was a local soccer
17 tournament that day.

18 Q And can you explain to the jury what is KK Athletics.

19 A It's into door -- I want to say soccer facility. But
20 they use it for other purposes like lacrosse. They have
21 two indoor turf fields.

22 Q And you said you were there for a soccer tournament?

23 A Yes.

24 Q And what age groups were playing in the tournament?

25 A Anywhere from U 8 which is seven year-olds up to high

1 school.

2 Q And were you there in the evening?

3 A I was there in and out most of the day. But I was --
4 I went home for dinner, and I went back about 6:30.

5 Q And at some point did you leave KK athletics?

6 A I left there -- when I got back at 6:30 my intentions
7 were to only stay for about an hour just to make sure
8 somebody else was there to cover for the club. I was
9 intending on heading up to church for Ash Wednesday.

10 Q Did you make that?

11 A No.

12 Q Why not?

13 A When I left the facility proceeding to my car, on the
14 way over to my car I passed two males in crossing the
15 road. And I got in my car. I went to put something in
16 the glove compartment. And I heard a loud pop which
17 caught my attention. And I looked up, and I was facing an
18 incident.

19 Q Let me just break that down a little bit.

20 Approximately what time did you leave KK
21 Athletics to go to your car?

22 A Well, three years ago, probably between 7:30, 8:00.

23 Q And when you left KK athletics, can you describe
24 where you walked?

25 A I left the front of the facility which is facing

1 south. I turned east on the sidewalk walking over to the
2 side street which is Timberline. My car was parked on
3 Timberline facing south also, just north of the corner of
4 the KK facility.

5 Q And once you got to the street, how did you walk to
6 your car?

7 A When I got to the end of the sidewalk I turned left
8 to go to my car. So, and obviously since the car was
9 facing south, the driver's side was in the street.

10 Q And you testified at some point you passed two men?

11 A When I turned left to go north to my car there were
12 two men walking south in the street towards me.

13 Q They were right in the street?

14 A Yes.

15 Q Of Timberline?

16 A Correct.

17 Q And how were those men dressed?

18 A Well, it was February so it was nighttime, so it was
19 cold. They were wearing winter coats, hoodies. Their
20 hoods were up.

21 Q Were you able to see their faces?

22 A No.

23 Q How would you describe the height and build of these
24 two men?

25 A Well, they were definitely both shorter than me.

1 They were probably in the neighborhood of about
2 five-eight.

3 Q For the record, how tall are you?

4 A Six foot three.

5 Q So they were shorter than you?

6 A Absolutely.

7 Q What type of build?

8 A Medium build, less than 200 pounds. It was hard to
9 tell with the coats on, but they weren't big.

10 Q You passed these two men, and then you get into your
11 car. What happened next?

12 A Well, like I said, I went to put something in the
13 glove compartment, so I was looking down and I heard a --
14 I would describe it as a pop, and I now know it was a
15 gunshot, which caught my attention. So I looked up. And
16 about 50 feet in front of me were now four individuals;
17 the two that had passed me in the street, two more at the
18 time when I looked up. One was already to the ground.
19 And one of the guys, or one of the males that passed me in
20 the street was standing with his arm out.

21 Q *His arm out*, what did you mean?

22 A He had it extended at the two other individuals on
23 the west side of the street.

24 What I saw was the muzzle fire come out of the
25 end of his jacketed arm. So there was probably about --

1 and obviously it was gunshots at that time.

2 Q You heard gunshots in addition to seeing the muzzle
3 flash?

4 A I heard three or four more gunshots, and I saw three
5 or four muzzle flashes.

6 Q In total how many gunshots did you hear?

7 A Well, including the first pop which I didn't see but
8 I heard, four or five.

9 Q And you testified you heard the first shot, you
10 looked up and you saw four people in the street, one was
11 already on the ground?

12 A One was already on the ground, and the second one
13 was, I would say retreating. He was moving a away.

14 Q When you say *retreating*, what direction was he
15 moving?

16 A He was -- the two people that I saw were facing west.
17 He was going west. He was moving away from them.

18 Q And where was he in relation to the individual where
19 you saw the muzzle flash?

20 A Well, when I originally looked up everybody was
21 probably less than ten feet apart. When he started moving
22 away he was probably still about 12 feet away. He didn't
23 get very far.

24 Q After seeing this happen, what did you do?

25 A I ducked down in my car.

1 Q Why?

2 A Because it was frightening.

3 Q And how long did you stay down?

4 A It seemed like forever, but it was probably less than
5 a minute, maybe 30 seconds.

6 Q And when you looked up, what did you see?

7 A After composing myself and waiting what seemed like a
8 long time, I felt it was safe enough to look up. By that
9 time the only people I saw were the two bodies in the
10 street.

11 Q And where were those two bodies located?

12 A They were located just probably ten feet south of the
13 end of the sidewalk in the street.

14 Q And where in the street; were they together, or were
15 they in different parts of the street?

16 A They were both on the west side of the street. One
17 was more towards the middle, one was more towards the
18 curb.

19 Q And what did you do next?

20 A Well, at that point I felt fairly safe that the
21 incident was over, so I got out of my car and ran back
22 into KK to alert not only people in there, but to call the
23 police. But I was also concerned that there were young
24 soccer players.

25 It was just a session ending, and there were a

1 number of teams that would be leaving shortly. So I
2 grabbed a couple of coaches, and I grabbed a couple of
3 adults, and said, *It might not be the best time to walk*
4 *out of the facility right now.*

5 Q Anything else?

6 A I mean I met a parent and a young female soccer
7 player. She was visibly upset. So I tried to comfort her
8 a little bit.

9 MS. MACEDONIO: Objection.

10 THE COURT: Sustained.

11 BY MR. DURHAM:

12 Q Sir, let me show you what is already in evidence as
13 Government Exhibit 251. It will be on the screen in front
14 of you, but it's also going to be basically behind you.

15 So what I'm going to ask you to do is turn
16 around and use the laser pointer and put the button on.

17 First all, of looking at this picture, do you
18 recognize this area?

19 A Yes.

20 Q And what do you recognize it to be?

21 A The large white roofed building on the left is KK
22 Athletics.

23 Q And you're referring to the white and blue building
24 in the top left-hand corner of the photograph?

25 A Yes.

1 Q That is KK athletics?

2 A Yes.

3 Q And you testified before that you walked out of KK
4 Athletics and walked to your car. Can you just explain to
5 the jury the route that you took?

6 A This is where KK was right there, there is a sidewalk
7 that runs adjacent to the front of the building. That is
8 the sidewalk I walked down. And I went to approximately
9 there.

10 Q You identify the building of KK Athletics as a
11 white-blue building. On the south side of the building in
12 the center there is a door?

13 A Correct.

14 Q And you walked from that door headed eastbound on
15 that sidewalk?

16 A Right.

17 Q And how far did you go on the sidewalk?

18 A I went all of the way to the end of the sidewalk and
19 turned left because my car was --

20 Q You walked north on that street?

21 A Correct.

22 Q And can you show the jury approximately where your
23 car was parked that night?

24 A It was only about two car lengths down, probably
25 right around there.

1 MR. DURHAM: Your Honor, can the record reflect
2 the witness is indicating a location not to the west side
3 of Timberline.

4 THE COURT: Yes, the west side he said two car
5 lengths above where the sidewalk from the soccer building
6 meets the sidewalk.

7 MR. DURHAM: Thank you, your Honor.

8 BY MR. DURHAM:

9 Q And you said you passed two men in the street. Can
10 you describe approximately where that was?

11 A It was approximately right by my car because my car
12 was far away from the sidewalk. If I was there they were
13 in the center of the street walking south. I had just
14 turned walking up.

15 Q And after you got in your car and then you heard the
16 first shot and you looked up, where were the four men?

17 A The four men were probably right about where this car
18 is so they were just north of the sidewalk or just south
19 of the sidewalk, sorry.

20 MR. DURHAM: Your Honor, could the record
21 reflect the witness has indicated there is a dark sedan
22 driving southbound on Timberline Drive.

23 THE COURT: Yes, the one near the soccer
24 building, not the one further down.

25 MR. DURHAM: Thank you.

1 BY MR. DURHAM:

2 Q And you indicated somebody was on the ground?

3 A Yes.

4 Q That was right there?

5 A Correct.

6 Q And you testified that a second person was moving
7 away. Where was that person?

8 A They were moving towards the parking lot.

9 Q So essentially they were headed to the west side of
10 Timberline?

11 A Correct.

12 Q Adjacent to where that same sedan is?

13 A Correct.

14 Q And where was the shooter?

15 A The shooter was probably where the sedan is.

16 Q And then when you got out of the car, where was the
17 first victim?

18 A The first victim I passed was closer to the sidewalk.

19 Q And just so we get our first and second. That
20 person, there was a shot first or a shot second?

21 A That person was shot first.

22 Q And he was closer to you?

23 A Yes.

24 Q And you went back inside?

25 A He got farthest away from the shooter.

1 THE COURT: Just for the record, you indicated
2 that the second person who was shot was lying in the
3 street near where the sidewalk meets. Is that where you
4 pointed to, sir?

5 THE WITNESS: Right.

6 BY MR. DURHAM:

7 Q And then the person who was shot first that was a
8 little further away from you, can you indicate where he
9 was in the street?

10 A They were pretty close to each other, but he was more
11 toward the center of the street where the second person
12 was more toward the sidewalk.

13 MR. DURHAM: Thank you. No further questions,
14 your Honor.

15

16 CROSS-EXAMINATION

17 BY MR. LONDON:

18 Q Mr. Moorman, I'm curious about something, inasmuch as
19 you say you didn't see their faces, and they wore hoodies,
20 what observation do you base your conclusion that they
21 were males?

22 A Just general attire. They appeared to be males.

23 Q Have you ever seen women wearing hoodies?

24 A Yes.

25 MR. LONDON: I have no further questions.

1 MS. MACEDONIO: I have no questions, judge.

2 THE COURT: Okay.

3 MR. DURHAM: No questions, your Honor.

4 THE COURT: You can step down.

5 Next witness?

6 MS. CAPWELL: Your Honor, the government calls

7 Roy Sineo.

8

9 **ROY SINEO**

10 called as a witness, having been first duly sworn,

11 was examined and testified as follows:

12 THE COURT: State your name and spell your last
13 name for the record.

14 THE WITNESS: It's Roy Sineo, S-I-N-E-O.

15 THE COURT: Mr. Sineo, if you could just move
16 your chair closer to the mic and stay close to it so it
17 picks up your voice.

18 THE WITNESS: Yes, sir.

19 MS. CAPWELL: Thank you, your Honor.

20 With the Court's permission, I would like to
21 place some items at the podium.

22 THE COURT: Sure.

23

24 **DIRECT EXAMINATION**

25 **BY MS. CAPWELL:**

1 Q Good afternoon, sir.

2 A Good afternoon.

3 Q What do you do for a living?

4 A I'm a forensic scientist with the Suffolk County
5 crime laboratory.

6 Q And how long have you been a forensic scientist with
7 the Suffolk County crime laboratory?

8 A Just over 14 years.

9 Q What are your duties and responsibilities as a
10 forensic scientist in the crime laboratory?

11 A I am assigned to the firearms and ballistics unit of
12 the Suffolk County crime laboratory and my duties and
13 responsibilities include examining any type of weapon that
14 is submitted to the laboratory from any of the police
15 agencies that are located within Suffolk County.

16 Typically I examine guns. But I'm also responsible for
17 examining any other type of weapon that may be submitted.
18 Conducting microscopic comparisons and examinations on
19 expended evidence components, as well as conducting serial
20 restorations on defaced firearms, gunshot residue exams on
21 clothing, as well as trajectory analysis and crime scene
22 reconstructions.

23 Q Let me ask you about all of those responsibilities
24 you have. You mentioned microscopic comparisons and
25 examinations. Can you briefly tell the members of the

1 jury what that is?

2 A Yes.

3 What microscopic examination and comparison of
4 expended evidence is, is that I have a specialized piece
5 of equipment at the laboratory called a comparison
6 microscope. And what that comparison microscope is, is
7 basically two high-powered microscopes joined together
8 optically by one eyepiece. There are two stages where I
9 can place separate pieces of evidence on and view them as
10 if they were one item.

11 When the police department at times may submit
12 expended evidence. And what I mean by that is either a
13 bullet or a casing that has been fired in a gun that was
14 recovered at a crime scene. I can look at those items on
15 the comparison microscope and determine if they had been
16 fired from the same weapon or try to connect them to other
17 weapons or other shootings that may have occurred
18 previously.

19 Q Do you have any other assignments at the Suffolk
20 County crime laboratory?

21 A Yes.

22 Q And what are those?

23 A I am also a member of the Suffolk County crime lab's
24 crime scene response unit.

25 Q And what are your duties and responsibilities with

1 that unit?

2 A When the police department needs laboratory
3 assistance in investigating a crime scene, I am a member
4 of a team that would respond from the laboratory to the
5 crime scene and assist the police department in the
6 evidence collection.

7 Q How long have you been a member of the crime scene
8 response unit?

9 A Approximately 12 years.

10 Q Is the Suffolk County crime laboratory part of the
11 Suffolk County Police Department?

12 A No, they are not.

13 Q What agency do you fall under?

14 A We fall under the office of the Medical Examiner of
15 Suffolk County.

16 Q Did you receive any training in the area of firearms
17 and ballistics analysis?

18 A Yes.

19 Q Can you please describe the training you have
20 received?

21 A Yes. About 14 years ago when I first became a member
22 of the lab's firearms unit my title was forensic scientist
23 trainee. For a two-year period I learned the different
24 functions of the firearms unit and I worked under the
25 direct and then indirect supervision of my two supervisors

1 who taught me the functions and how to conduct the
2 examinations that are required in the firearms unit.
3 During that period of time I had been to several gun
4 manufacturing companies in Connecticut, namely Marlin and
5 Mossberg. They are manufacturers of firearms.

6 During my period of time up there I was able to
7 go on a tour of those factories and see how they make
8 firearms from the raw materials to the finished product.
9 I got to understand and see what tools they used to create
10 the different parts and how the firearms function.

11 I'm also a -- I took several armorers courses
12 given at the NYPD laboratory in Jamaica, Queens. These
13 were conducted by representatives of several firearms
14 manufacturers, namely Mossberg, Colt, Glock, Baretta, Sig
15 Sauer and Hi-Point firearms.

16 These classes were like I said, taught by
17 members of those gun manufacturing companies. And I got
18 to learn how you take apart those specific weapons,
19 understand all the internal parts, how they function and
20 put them back together.

21 After completing those courses and taking a
22 written test I was licensed as an armorer for those gun
23 manufacturing companies.

24 I have also been to the FBI academy in Quantico,
25 Virginia for a week of firearms training. These courses

1 were taught by members of the FBI's firearms and
2 ballistics unit. And basically I learned advanced
3 techniques in identifying firearms and conducting firearms
4 examinations.

5 I have also been to Largo, Florida for a week of
6 training on a piece of equipment that I have at work
7 called IBIS, and IBIS stands for the Integrated Ballistic
8 Identification System. It's essentially --

9 MS. RANTALA: Objection.

10 THE COURT: I'll allow it. Go ahead.

11 A What IBIS is, essentially it's a computer system that
12 we have at work that I place -- I take photographs of
13 expended shell casings that I receive as evidence. And
14 the computer system compares it to open shootings within
15 our county and some of the other local jurisdictions.

16 I stay current in the field of firearms by
17 reading periodicals issued by certain manufacturers of
18 firearms. And I read the American Rifleman, which is an
19 official publication of the National Rifle Association, as
20 well as AFTME articles. AFTME stands for the Association
21 of Firearms and Tool Mark Examiners. It's a professional
22 organization that firearms examiners can belong to of
23 which I am a regular member.

24 BY MS. CAPWELL:

25 Q I'm sorry, I was going to -- I'll let you finish.

1 A I'm sorry.

2 These articles are case studies and casework
3 written by other members of AFTME. And it just means I
4 stay current in the field. I have also taken and passed
5 over two dozen proficiency tests in the field of firearms.

6 Q And just going back to the two-year training program
7 at the crime lab.

8 Once you finished that program, what happened?
9 What was the next step?

10 A After the two-year training period was over I was
11 promoted to the title of forensic scientist. At that
12 point I was able to take casework out on my own and sign
13 and authorize my own reports.

14 Q And were you subsequently promoted to another
15 position?

16 A Yes.

17 Q What was that position?

18 A I remained a Forensic Scientist I for eight years.
19 And in 2008 I was promoted to Forensic Scientist II.

20 Q And you have been in that position since that time?

21 A That's my current title, correct.

22 Q And how does being a Forensic Scientist II differ
23 from being a Forensic Scientist I?

24 A As a Forensic Scientist II I am responsible for
25 supervising some other members of the firearms unit.

1 Q Approximately how many examinations of ballistics
2 evidence have you conducted in your career?

3 A I would say thousands.

4 Q Have you previously testified as an expert in the
5 area of firearms and ballistics examinations?

6 A Yes, I have.

7 Q And you testified in both Federal and State Court?

8 A Yes, I have.

9 Q Approximately how many times have you previously
10 testified as an expert in the area of firearms and
11 ballistics examination?

12 A Approximately 50 times.

13 Q How many of those were in Federal Court?

14 A Twice.

15 Q Has any court ever declined to qualify you as an
16 expert in the area of firearms and ballistics examination?

17 A No.

18 MS. CAPWELL: Your honor, at this point pursuant
19 to Federal Rules of Evidence 702, the government moves for
20 the qualification of Mr. Sineo as an expert in the field
21 of firearms and ballistics examination.

22 THE COURT: Any objection?

23 MS. MACEDONIO: No, judge, thank you.

24 MS. RANTALA: No objection, your Honor.

25 MS. CAPWELL: Your Honor, actually this might be

1 a good time to take a break because there is one other
2 issue that the government needed to bring to your
3 attention. And we can clean up --

4 THE COURT: You want to take a lunch break?

5 MS. CAPWELL: No, no, just take five minutes to
6 clean this up and to address one matter.

7 THE COURT: Let me just explain to you before we
8 take a break.

9 There is a request to allow this witness to
10 testify as an expert witness. Let me just explain to you
11 what that means. I'll give you more detailed instructions
12 on that at the end of the case.

13 But when someone is allowed to testify as an
14 expert under the Federal Rules of Evidence, it simply
15 means that he or she can offer their opinion in the area
16 of expertise that they have. Other witnesses, factual
17 witnesses can't offer opinions, they just offer facts.
18 Expert witnesses can offer opinions in the areas of their
19 expertise. That's the difference.

20 However, under the law you evaluate expert
21 testimony the same way you do every other witness'
22 testimony. There is no difference how the jury evaluates
23 their creditability and what weight, if any, to give to
24 their testimony.

25 Okay. So I'm going to take a five-minute break.

1 (A recess was taken.)

2 (After recess.)

3 THE COURT: Ms. Capwell, you have an issue?

4 MS. CAPWELL: Yes, your Honor. At the very end
5 of this witness' testimony --

6 THE COURT: Hold on, hold on. Just let me make
7 sure everyone gets set.

8 Okay. Go ahead.

9 MS. CAPWELL: Thank you, your Honor.

10 At the very end of this witness' testimony I'm
11 going to ask him a few questions about the Argueta/Torres
12 crime scene. It will be very limited, perhaps ten
13 questions. And so I just think your Honor should also
14 give this witness the admonition.

15 THE COURT: Okay. Let me explain to you,
16 Mr. Sineo. I have made a ruling in connection with those
17 two murders that the jury should not know the age of
18 victim Torres in any way. They're not to know that at
19 all. They're not to know age, not to know that he was a
20 child.

21 So in referencing anything related to that scene
22 or any -- anything related to those murders, you're not to
23 make reference to those facts. You can refer to them by
24 the name, or as the individual, the deceased, or whatever,
25 but not anything related to the child.

1 THE WITNESS: Male victim?

2 THE COURT: Male victim is fine.

3 MS. CAPWELL: Thank you, your Honor.

4 THE COURT: Okay. Bring in the jury.

5 (The jury entered the courtroom at 12:19 p.m.)

6 BY MS. CAPWELL:

7 Q Mr. Sineo, drawing your attention to the night of
8 February 17th, 2010. Were you working that night?

9 A Yes, I was.

10 Q And did you receive a duty call that night?

11 A Yes.

12 Q And pursuant to that call what did you do?

13 A I was asked to respond to the Suffolk County crime
14 laboratory, collect our equipment and respond with two
15 other members of the crime scene response unit to
16 Timberline Drive in Brentwood.

17 Q And approximately what time did you arrive at
18 Timberline Drive in Brentwood?

19 A It was just about 11 o'clock pm.

20 Q And was law enforcement already present on the scene?

21 A Yes, they were.

22 Q What happened when you and your co-workers arrived at
23 the crime scene?

24 A When we arrived we logged in with the police officer
25 who was keeping the log of who shows up at the crime

1 scenes. And after that a walkthrough of the crime scene
2 was conducted.

3 Q And did you go on the walkthrough?

4 A No, I did not.

5 Q And did another member of the laboratory go on the
6 walkthrough?

7 A Yes.

8 Q And after the walkthrough was finished what happened
9 at that point?

10 A At that point the identification unit from the
11 Suffolk County Police Department began taking an overall
12 video of the crime scene.

13 Q And were you there while that was happening?

14 A For a portion of it. Then I was asked to respond to
15 Good Samaritan Hospital to collect some evidence.

16 Q And what evidence were you asked to collect at the
17 Good Samaritan Hospital?

18 A I learned that there was a victim of a shooting who
19 had survived the shooting and I was asked to swab that
20 person's hands for possible trace evidence or DNA.

21 Q And while you were at the hospital -- withdrawn.

22 Did you later learn that victim's name was
23 Aaron Galan?

24 A Yes, that's correct.

25 Q And while you were at Good Samaritan Hospital that

1 night, were photographs taken at the hospital of
2 Mr. Galan?

3 A Yes, they were.

4 Q Now, what happened after you were done at the
5 hospital?

6 A After the photographs were taken and I swabbed
7 Mr. Galan's hands I returned back to Timberline Drive in
8 Brentwood to rejoin the members of my team to process the
9 scene.

10 Q And what did you do upon returning to the scene of
11 the crime?

12 A When I returned I notified the other members that I
13 was there. And at that point the identification unit had
14 just about wrapped up taking the overall photographs and
15 completed their video.

16 At that point I entered the scene with the other
17 members of my team and we began to lay placards down on
18 individual evidence items that we were going to collect.

19 Q And after you laid down all of the placards for the
20 evidence items, what did you do after that?

21 A At that point the collection process began. And each
22 individual item was then photographed again by the
23 identification section and then I collected the evidence
24 items.

25 Q Let me show you a photograph that is already in

1 evidence, it's Government Exhibit 223. Do you see that in
2 front of you, sir?

3 A Yes.

4 Q And can you please just explain to the members of the
5 jury what is viewed in the photograph?

6 A This is a photograph of Timberline Drive in
7 Brentwood. The yellow placards are crime laboratory
8 numbers and letters. The numbers on this -- number 6 in
9 the front is the pool of blood. And the letters going
10 away from that are a trail of blood that is indicated by
11 the letters.

12 Q Okay, and that goes from A and then up through the
13 letters going up, that's north on Timberline?

14 A That would be north. That's correct.

15 Q Now, let me show you what has been marked in evidence
16 as Government Exhibit 231.

17 Do you recognize what you see in this
18 photograph?

19 A Yes, I do.

20 Q And can you tell us what this is?

21 A This is another evidence item that was collected to
22 the east of Timberline Drive in a parking lot south of the
23 beauty supply store.

24 Q And is there a placard in this picture?

25 A Yes, there is.

1 Q And where in the picture is the placard?

2 A The placard is located to the left in front of that
3 parked vehicle in that parking lot.

4 Q And indicating pretty much the center of the
5 photograph?

6 A Yes.

7 Q And, sir, what does that placard show, what does it
8 designate?

9 A It designates an expended bullet that I found in that
10 parking lot.

11 Q And did you find this piece of evidence?

12 A Yes, I did.

13 Q And also can you see in the -- can you describe the
14 background of the scene there, what was there?

15 A There is some crime scene taped placed across which
16 is parallel to Second Avenue in Brentwood.

17 Q And was that crime scene tape there when you arrived
18 at the scene?

19 A Yes, it was.

20 Q And aside from law enforcement personnel and lab
21 personnel, was anybody else permitted at the scene that
22 night?

23 A No.

24 Q And how was the scene secured?

25 A The scene is secured and designated by the crime

1 scene tape, as well as constant presence of uniformed
2 Suffolk County police officers.

3 Q Let me now show you what is in evidence as Government
4 Exhibit 232. And can you identify that for us?

5 A Yes.

6 Q What is it?

7 A This is lab item number 17. It's a close-up photo of
8 the previous shot that you saw and it's an expended
9 bullet.

10 Q Now, after you saw this item in addition to all the
11 other items can you describe when you started speaking
12 about the collection of the evidence, how does that work?

13 A I'm sorry, can you rephrase that?

14 Q Sure. After you found item number 17, the expended
15 bullet, what happened after that?

16 A After the items had been marked by placards the
17 collection process began. And that involved the
18 identification unit of the police department photographing
19 each individual item and then I collected the items.

20 Q Very well. And did you collect the items for the
21 crime laboratory?

22 A Yes, they were collected for the crime laboratory.

23 Q And speaking specifically about item number 17 here,
24 the expended bullet that was found adjacent to the parking
25 lot, what steps did you take to collect that piece of

1 evidence?

2 A After it was photographed I used a slide box to
3 collect it. And what a slide box is, it's essentially two
4 white cardboard boxes that fit into one another. So I
5 opened it up, placed it face down over the expended bullet
6 and closed the box as to collect that evidence item
7 without touching it.

8 Q And what happened to all of the evidence that was
9 collected by the laboratory that night of the 17th and
10 also into the early morning hours of February 18th?

11 A Once all the evidence was collected it was secured
12 and locked up in our crime scene response truck and then
13 it was driven back by myself and the other members of the
14 team to the laboratory. It was logged into our computer
15 system and then the evidence was secured in our crime lab
16 evidence vault.

17 Q I want you to take a look if you would at what has
18 been marked as Government Exhibit 283. It should be at
19 the desk there on your left. If you could just take a
20 look at that, it's the piece of paper.

21 And I ask you if you recognize that?

22 A Yes, I recognize this.

23 Q And what is that Exhibit Number 283?

24 A This is a digital reproduction of a crime scene
25 diagram that reflects the evidence items and the streets

1 in and around Timberline Drive in Brentwood.

2 Q And did you assist at the scene in taking
3 measurements of where the items were?

4 A Yes, I did.

5 Q And can you -- let me ask you this, does that diagram
6 fairly and accurately depict where items of evidence were
7 found on the night of February 17, 2010 into the early
8 mornings hours of February 18th?

9 A Yes, it does.

10 MS. CAPWELL: Your Honor, at this time the
11 government would move to admit Government Exhibit 283 and
12 publish it to the jury.

13 MS. MACEDONIO: No objection, your Honor.

14 MS. RANTALA: No objection.

15 THE COURT: Government Exhibit 283 is admitted
16 and you can publish it to the jury.

17 MS. CAPWELL: Thank you.

18 (Government Exhibit 283 in evidence.)

19 BY MS. CAPWELL:

20 Q All right. Sir, if you can just explain some of this
21 diagram to us. Can you point out where Timberline Drive
22 is? And there is a laser pointer right in front of you
23 which you're welcome to use, if that assists you.

24 A Pardon my back.

25 Timberline Drive is the vertical street right

1 here running north and south.

2 Q Let the record reflect right in the center of the
3 photograph running north and south vertical?

4 A That's correct.

5 Q All right. Can you point out where Second Avenue is
6 on the diagram, show us?

7 A Second Avenue is the horizontal street where the
8 laser pointer is pointing.

9 MS. CAPWELL: May the record reflect the witness
10 is indicating the horizontal line in the very bottom of
11 the diagram.

12 THE COURT: Yes.

13 BY MS. CAPWELL:

14 Q And can you please point out where the salon store is
15 on this diagram?

16 A Yes.

17 The beauty supply store is this box here.

18 Q Okay.

19 MS. CAPWELL: The record will reflect on the
20 right side of the diagram, that is the beauty supply
21 store.

22 BY MS. CAPWELL:

23 Q Correct?

24 A That is correct.

25 Q And can you point out where KK Athletics is on this

1 diagram?

2 A Yes.

3 KK Athletics is located in the top left portion
4 of the diagram up here.

5 Q Thank you.

6 And if you would look right directly in the
7 middle of the diagram there are the letters RP1. Is that
8 right.

9 A Yes, RP1.

10 Q Can you explain what that is, please?

11 A RP1 stands for reference point 1. It's a measurement
12 and a location that we measured off of the telephone pole
13 that is located here. And it's 12 feet off that pole in
14 the middle of the street.

15 The reason that it is in the diagram is that is
16 our point of reference where we made all of our
17 measurements from to the individual evidence items.

18 Q And can you also -- is there another telephone pole
19 that is depicted in this diagram?

20 A Yes, there is.

21 Q And can you point out to the members of the jury what
22 that is, please?

23 A Yes. The second telephone pole is located up here.

24 MS. CAPWELL: All right. May the record reflect
25 towards the top of the diagram just north of a vehicle

1 that is on the west side of Timberline Drive in the
2 diagram.

3 THE COURT: Yes.

4 BY MS. CAPWELL:

5 Q And can you point out where item, lab item number 17
6 is on the diagram?

7 A Yes. It's located right here, which would be the
8 bottom right side.

9 Q That is designated number 17?

10 A Yes, it is.

11 Q And what is that?

12 A That is the expended bullet.

13 Q And also if you could just briefly explain without
14 going into much detail, the box on the left side of the
15 diagram that contains a lot of information. What is that?
16 Explain it.

17 A Is it this box you're talking about?

18 Q Yes, indicating the box towards the left bottom
19 corner of the diagram.

20 A That box has some writing in it that indicates each
21 individual laboratory item that was collected and what it
22 was.

23 Q And does it also include ID items?

24 A Yes. There were some items that the laboratory did
25 not collect but the identification unit collected. And

1 they are also included in that.

2 Q Just so that is clear, each item number has a number,
3 and that number is designated where it was found on that
4 diagram, correct?

5 A That's correct.

6 Q And can you explain whether this diagram is to scale
7 or how it was prepared in that regard?

8 A The diagram measurements were taken to the individual
9 evidence items. There is a scale for distance. And some
10 of the items had been placed by photograph, such as the
11 beauty supply store and KK Athletics. But essentially
12 it's a fair and accurate depiction of the evidence items
13 that were collected and the way the scene appeared on that
14 night.

15 Q Thank you, sir.

16 If you would now turn your attention to one of
17 the plastic packages that are on the witness stand and
18 specifically the item 265.

19 Do you see the items that are labeled with
20 stickers and the number 265?

21 A Yes, I do.

22 Q And turning your attention specifically to 265B.
23 What is contained -- do you recognize the items contained
24 in 265B?

25 A Yes, I do.

1 Q And what are they?

2 A The item contained within 265B is an expended bullet
3 that was collected at the crime scene which was item
4 number 17. And it also contains the original slide box
5 that I used to collect that evidence item.

6 Q And how do you recognize those items as such?

7 A I recognize the items as such by my handwriting.
8 It's on the slide box. The specific and unique central
9 complaint number that is assigned in this case is on that
10 box. As well as on the expended bullet I see my initials
11 and the laboratory number that was assigned to this case.

12 MR. DURHAM: The government moves to admit into
13 evidence Government Exhibit 265B.

14 MS. MACEDONIO: No objection, judge.

15 MR. RANTALA: No objection, your Honor.

16 THE COURT: Government Exhibit 265B is admitted.

17 (Government Exhibit 265B in evidence.)

18 BY MS. CAPWELL:

19 Q Did you perform a ballistic examination of the
20 expended bullet labeled item number 17 by the laboratory
21 and contained within Government Exhibit 265B?

22 A Yes, I did.

23 Q On what date?

24 A That was on February 19, 2010.

25 Q And can you just describe your examination to the

1 jury, when you examined the expended bullet?

2 A Once I took the expended bullet into my custody and
3 logged it in on the computer, I brought it back to my
4 workstation and began taking notes as to the packaging.
5 And I started working on trying to classify what kind of
6 expended bullet this was.

7 What I mean by that is, I took measurements of
8 the bullet to try to determine its caliber or what type of
9 weapon may have fired this bullet. And I also weighed it
10 to see how much it weighed. And I also looked at the
11 physical characteristics and class characteristics of this
12 bullet to try to determine -- assist in my determination
13 as to what kind of weapon may have fired this bullet.

14 Q What conclusions did you reach regarding that
15 expended bullet?

16 A My examination revealed that it was a .38/.357 class
17 caliber. And it was -- had been fired from a weapon that
18 its barrel had been rifled with five lands and grooves
19 with a right hand twist of a conventional style rifle.

20 Q Okay. Let's break that down a bit, it's a mouthful.

21 You first mentioned that you determined it was a
22 .38 or .357 class caliber. Is that correct?

23 A That's correct.

24 Q And can you explain what that is, what is a *class*?

25 A A class caliber, .38/.357 class caliber, refers to

1 the type of weapon that may have fired this bullet. And
2 the diameter of the bore of that weapon would be
3 approximately .357 inches. And this expended bullet fit
4 that category.

5 Q All right. And do bullets in the .38 caliber and
6 .357, do they share the same diameter?

7 A The base of the bullet would be the same.

8 Q Now, you also mentioned lands and grooves. Can you
9 explain what those are?

10 A Yes.

11 Lands and grooves are firearms terms that
12 describe the rifling characteristics of a barrel of a
13 weapon. And what I mean by *rifling* is that when a weapon
14 is made in the factory the manufacturer may cut a series
15 of spiral cuts into that barrel in order to -- when a
16 bullet is fired to give the bullet stability, velocity and
17 accuracy.

18 These class characteristics are determined by
19 the manufacturer of the firearm. And it just -- they're a
20 tool they use to cut this rifling in. This can help us to
21 determine and also to eliminate certain kinds of weapons
22 once we see that on a bullet. The bullet will have those
23 class characteristics impressed upon it when it's fired
24 down -- and it travels down the barrel of the weapon.

25 Q And the lands and grooves, what do those specifically

1 refer to?

2 A The lands and grooves correspond to the cut rifling.
3 And they are a series of high areas and low areas that are
4 created inside of the barrel when the rifling process is
5 conducted by the manufacturer.

6 Q And you mentioned that it was conventional rifling.
7 Is that right?

8 A That's correct.

9 Q And what do you mean by that? Is there something
10 that's a different type of rifling?

11 A There are essentially two types of rifling processes
12 that a manufacturer can use. One is conventional, it's
13 probably the most common type where they use a tool to cut
14 the riflings into the barrel.

15 The second type is called polygonal. And
16 essentially the way that process is done real simply is
17 they place the rifling tool into the barrel and then they
18 compress the barrel around the tool to create the riflings
19 inside.

20 Q And are those two different ways to create or build
21 the barrel?

22 A Yes, they are.

23 Q And you also mentioned that it had a right-hand
24 twist. Is that right?

25 A That's correct.

1 Q And what does that refer to?

2 A When they cut rifling into a barrel the
3 manufacturer -- the rifling is helical. It's going to be
4 as a twist. So it's either right or left which are the
5 only two options, and that is a choice determined by the
6 manufacturer.

7 Q All right. On February 19th, 2010 in connection with
8 this case did you also examine small lead fragments that
9 were recovered during the autopsy of David Sandler?

10 A Yes, I did.

11 Q And I would ask you now to look at what's been marked
12 as Government Exhibit 265D.

13 Do you recognize the items listed in Government
14 Exhibit 265D?

15 A Yes, I do.

16 Q And what are they?

17 A Within 265D is a paper bag. There is also a slide
18 box. And then there's a zip-lock bag that contained some
19 small fragments. The paper bag was the original bag that
20 was submitted to the laboratory from the Medical
21 Examiner's Office.

22 When I opened up that bag it contained the slide
23 box that has the medical examiner's markings on it. And
24 when I opened up that slide box it contained the small
25 metal fragments.

1 Q And how do you recognize those items?

2 A I recognize these items as I see my initials are on
3 the -- both packaging, as well as the zip-lock bag that I
4 created has the unique central complaint number on the
5 labels. And it has my initials on it.

6 MS. CAPWELL: The government moves to admit
7 Government Exhibit 265D.

8 MS. MACEDONIO: No objection, judge.

9 MR. RANTALA: No objection, your Honor.

10 THE COURT: All right. 265D is admitted.

11 MS. CAPWELL: Thank you.

12 (Government Exhibit 265D in evidence.)

13 BY MS. CAPWELL:

14 Q What if any conclusion did you reach based on your
15 examination of those lead fragments?

16 A The only conclusion I was able to draw from them was
17 that they were metal fragments and they had no ballistic
18 value to them.

19 Q And what do you mean by *no value*. What is the *value*?

20 A What I mean by *no ballistic value* is that they're so
21 small that I could not detect any riflings or any
22 individual markings that may have been transferred from
23 the barrel of the weapon.

24 Q Let me now turn your attention to what is marked as
25 265C.

1 Did you examine a third piece of ballistic
2 evidence that same day on February 19th, 2010 in
3 connection with the David Sandler murder?

4 A Yes, I did.

5 Q And what else did you examine?

6 A This was an expended bullet core.

7 Q And can you please describe to the jury what a bullet
8 core is?

9 A Yes.

10 A bullet core is a lead portion of a bullet.
11 It's usually the interior portion of a jacketed cartridge.
12 And what I mean by *jacketed*, is that it would have copper
13 coating or possibly brass or nickel coating over it. It's
14 the main weight or the main body of the cartridge.

15 Q And do you recognize the items within Government
16 Exhibit 265C?

17 A Yes, I do.

18 Q What are they?

19 A Within 265C is a slide box. It has my markings on it
20 and the central complaint number assigned to this case.
21 And there is also a zip-lock bag that contains the
22 expended bullet core that has my markings on it.

23 MS. CAPWELL: The government moves to admit
24 Government Exhibit 265C.

25 MS. MACEDONIO: No objection, your Honor.

1 MS. RANTALA: No objection.

2 THE COURT: 265C is admitted.

3 (Government Exhibit 265C in evidence.)

4 BY MS. CAPWELL:

5 Q And where does the expended bullet core come from?

6 A The expended bullet core was recovered from articles
7 of clothing that were given to us at the crime scene from
8 police officer Ziegler (ph) that night.

9 Q And specifically as to the bullet core that is within
10 Government Exhibit 265C, whose clothing did they come
11 from?

12 A Mr. Galan.

13 Q What was your conclusion regarding that piece of
14 ballistic evidence?

15 A With the bullet core I'm not able to determine the
16 caliber, and it has no value to it. And the reason it has
17 no value is that there is a portion of it missing that
18 would be the jacket. That is what would be coming into
19 contact with the interior portion of the barrel when that
20 bullet is fired. And that is missing.

21 Q Now, subsequent to your ballistic examination on
22 February 19th, 2010, were you asked to examine additional
23 ballistic in connection with the David Sandler homicide
24 investigation?

25 A Yes, I was.

1 Q And what items were you requested to analyze?

2 A There was an expended bullet that was submitted to
3 the laboratory, as well as some fragments of bullet
4 submitted to the laboratory after surgery.

5 Q And when you mention surgery, whose surgery?

6 A Mr. Galan.

7 Q I'll ask you now to take a look at Government
8 Exhibit 266A and B in that separate plastic package. And
9 looking specifically at Government Exhibit 266A.

10 Do you recognize what is inside there?

11 A Yes, I do.

12 Q And what is that?

13 A Within 266A is a plastic bag. There is a plastic
14 container. It has a hospital label on it, and then that
15 is a zip-lock bag that has some other fragments in it.
16 These all have my initials and a date on it. And they
17 also have the lab number associated with it.

18 MS. MACEDONIO: I didn't hear that last part,
19 what number is associated with it?

20 THE WITNESS: The lab number.

21 BY MS. CAPWELL:

22 Q Referring to the Suffolk County crime laboratory?

23 A Yes.

24 MS. CAPWELL: The government moves to admit
25 Government Exhibit 266A into evidence.

1 MS. RANTALA: May we approach, your Honor?

2 THE COURT: Yes.

3 (The following occurred at sidebar.)

4 MS. RANTALA: I don't think we have a connection
5 of chain of custody all the way from when it was found and
6 to this officer. So I would object on the chain of
7 custody basis.

8 THE COURT: It isn't necessarily all the way,
9 but I think he certainly -- he can't establish that it was
10 taken from the body. I don't know if you have another
11 witness that is going to do that. Unless you're going to
12 call whoever did that at the hospital.

13 MS. CAPWELL: And that would be just to get the
14 piece of evidence into evidence here. But he could still
15 testify about it?

16 THE COURT: Yes, he can. He obviously examined
17 it, but I can't admit it until I have the .

18 MS. CAPWELL: Subject to connection --

19 THE COURT: Right.

20 You have no objection to him testifying what
21 analysis he did on it.

22 MR. RANTALA: Well, again, subject to the
23 connection, if there is a proper chain of custody that it
24 came from the body.

25 THE COURT: If they don't get that I'll strike

1 the testimony.

2 MS. RANTALA: Very well.

3 MS. CAPWELL: It is not for the value, it is
4 just to make it complete.

5 MS. RANTALA: All right. I'm protecting the
6 record.

7 (The following occurred in open court.)

8 MS. CAPWELL: Your Honor, the government moves
9 to admit 266A into evidence subject to connection.

10 THE COURT: Well, I'm not going to admit it into
11 evidence at this point. I'm going to allow the witness to
12 testify regarding whatever examination he did on it,
13 because what *subject to connection* means, another witness,
14 that the chain of custody has to be testified to first.

15 So I'm not going to admit it, but I'll allow him
16 to testify regarding it.

17 MS. CAPWELL: Thank you.

18 BY MS. CAPWELL:

19 Q And, sir, what, if any, conclusions did you reach
20 regarding the exhibit within 266A or the evidence within
21 266A?

22 A I concluded that the metal fragments had no value.

23 Q Thank you.

24 Now, if you would take a look at Government
25 Exhibit 266B which is already in evidence.

1 Do you recognize it?

2 A Yes, I do.

3 Q And what items are within 266B?

4 A Within 266B is a paper bag. It has my markings on
5 it, the central complaint number assigned to this case, a
6 slide box that has my markings on it, and the central
7 complaint number on this case. It also contains an
8 expended bullet that has my markings on it.

9 MS. RANTALA: Objection. May we approach?

10 THE COURT: Yes.

11 (The following occurred at sidebar.)

12 MS. RANTALA: I don't know that we have a chain
13 of custody between, I think this was the one that was --

14 MS. CAPWELL: It is already in evidence.

15 MS. RANTALA: There's a chain of custody between
16 the person who -- this is one on the roadside, correct?

17 MS. CAPWELL: Yes.

18 MS. RANTALA: Collected by officer or the CSI
19 Jodi Rios. I don't know how it got from Jodi Rios to the
20 examiner.

21 THE COURT: Okay, you can question him regarding
22 that. But because it is in evidence already he can
23 testify regarding whatever examination that he did. And
24 break in the chain can go to the weight. But it is in
25 already.

1 MS. RANTALA: Just complete the record.

2 MS. CAPWELL: That officer will testify as to
3 the individual from the unit who transported this bullet
4 to the crime lab. And she put his name on the record.
5 And I believe that he is retired.

6 THE COURT: Okay.

7 (The following occurred in open court.)

8 BY MS. CAPWELL:

9 Q Sir, as to 266B which we were just discussing, I
10 believe you mentioned it was a slide box included in the
11 Government Exhibit 266B?

12 A That's correct.

13 Q In what condition was it when you received the slide
14 box?

15 A It was originally inside of the paper bag that I
16 previously mentioned.

17 Q And was the paper bag sealed?

18 A Yes, it was sealed with yellow evidence tape.

19 Q And then you opened that brown evidence bag?

20 A That's correct.

21 Q And the slide box was within it?

22 A That's correct.

23 Q And was the slide box sealed in any way?

24 A May I refer to my notes?

25 MS. CAPWELL: Your Honor, is that all right?

1 THE COURT: Yes. You need to refresh your
2 recollection?

3 THE WITNESS: Yes, sir.

4 THE COURT: Go ahead.

5 MS. CAPWELL: For the record, the witness has
6 two 3500 exhibits in front of him. And I believe he's
7 going to look at 3500 RS19.

8 BY MS. CAPWELL:

9 Q Is that correct, are you looking at 3500 RS19?

10 A Yes, that's correct. The slide box was sealed with
11 Scotch tape.

12 Q Now, did you conduct a ballistic -- I'm sorry, once
13 the slide box was out of the paper bag, did you mention
14 the other evidence inside the 266B?

15 A Yes. There was also an expended bullet.

16 Q And did you conduct a ballistics examination of that
17 expended bullet?

18 A Yes, I did.

19 Q And what were your conclusions based on your
20 examination?

21 A I determined that it was .38/.357 class caliber. It
22 was rifled, had been fired from a weapon whose barrel had
23 been rifled with five lands and grooves with a right-hand
24 twist of a conventional style rifling.

25 Q Now, did you have an opportunity to compare the

1 expended bullet within Government Exhibit 266B to lab item
2 number 17, the expended bullet that you recovered from the
3 scene?

4 A Yes, I did.

5 Q And were you able to make any conclusions?

6 A I used my comparison microscope to compare what is
7 lab item number 6 to lab item number 17. And my results
8 were inconclusive at this time. I was unable to ascertain
9 if they had both or had not been fired from the same
10 weapon.

11 Q And why were your conclusions inconclusive?

12 A Each of those bullets had areas that had damage to
13 them from hitting objects.

14 MS. MACEDONIO: Objection.

15 THE COURT: Can you tell how the damage, what
16 type of damage it is, what it's from?

17 THE WITNESS: It had to have hit an object prior
18 to us collecting it.

19 THE COURT: The objection is overruled.

20 A So with the damage to those bullets the areas where I
21 would look for individual markings that would identify
22 that back to a weapon, they -- the two of them were
23 damaged in opposite areas, so I wasn't able to compare the
24 two of them.

25 BY MS. CAPWELL:

1 Q Now, regardless of having been unable to ascertain
2 whether the two bullets were fired from the same weapon,
3 what similarities did the two bullets have based on your
4 examination?

5 A Both bullets were of the same class caliber. They
6 both had impressions of the same rifling characteristics.
7 And the lands and grooves on each of those bullets when I
8 measured them were approximately the same width.

9 Q And how about the material that the both expended
10 bullets were made out of, was that similar?

11 A Both were lead bullets.

12 Q And did they both have the right-hand twist?

13 A Yes, they both were.

14 Q And what, if any, significance did it have to you as
15 an expert in the area of ballistics and firearms that when
16 you measured the lands and grooves that they had the same
17 width on both expended bullets?

18 A That significance would indicate that they -- it's
19 possible that they were fired from a similar model and
20 make of weapon.

21 Q Now I ask you to turn to --

22 THE COURT: Before you go to another exhibit, I
23 want to break for lunch now. Okay?

24 We'll take a lunch break. We'll meet again at
25 two o'clock. Okay? Two o'clock.

1 Don't discuss the case.

2 (The jury left the courtroom at 12:56 p.m.)

3 THE COURT: Okay. Everyone be seated. How much
4 more do you have of this witness?

5 MS. CAPWELL: Your Honor, I think 15, 20 minutes
6 at the most.

7 THE COURT: Okay. Then the next witness?

8 MR. DURHAM: Janet Talavera, your Honor. The
9 FBI witness, two in this case .

10 THE COURT: Okay. Have a good lunch.

11 MS. CAPWELL: Thank you.

12 (A luncheon recess was taken at 12:58 p.m.)

13 (Continued on the following page.)
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A F T E R N O O N S E S S I O N

2 pm

(The following ensued in the presence of the jury.)

THE COURT: Please be seated.

ROY SINEO

called by the Government, having been previously duly sworn/affirmed, continued testifying as follows:

DIRECT EXAMINATION (Continued)

BY MS. CAPWELL:

Q. Mr. Sineo, if you could, please look at what has been marked as Government Exhibit 265A.

Do you recognize the items within that pouch?

A. Yes, I do.

Q. What are they? Or what is it?

A. 265A is an envelope that I created at the laboratory. It has my markings, the unique central complaint number assigned to this case, and it obviously contained the expended bullets that I had previously spoken about.

This envelope contains that evidence and it is used to be secured in a secure area in our laboratory in

1 the firearms what we call open case file. And this is an
2 area where I keep evidence that is not linked to a
3 specific weapon so that they can be actively searched
4 against new evidence that comes into the laboratory.

5 Q. Is there any ballistics evidence within that envelope
6 at this time?

7 A. No, there is not.

8 Q. Can you explain to us where it is now; what you did.

9 A. I had removed the expended bullets and placed them
10 into the other exhibits here that are marked 265B, 265C,
11 and 265D.

12 They were taken out of that envelope so that
13 they could be seen for the purposes of this trial.

14 Q. Did you also place a couple of the items in
15 Exhibit 266, 266B?

16 A. Yes. 266B and also 266A were also originally
17 contained within that envelope.

18 Q. Thank you.

19 MS. CAPWELL: Your Honor, at this time we move
20 to admit Government Exhibit 265A.

21 MS. MACEDONIO: No objection, your Honor.

22 MS. RANTALA: No objection.

23 THE COURT: 265A is admitted.

24 (Government Exhibit 265A in evidence.)

25 MS. CAPWELL: Thank you, your Honor. And may I

1 also briefly publish to the jury, using the envelope, two
2 expended bullets?

3 THE COURT: Yes.

4 BY MS. CAPWELL:

5 Q. I will just publish 265B on the overhead projector.

6 Mr. Sineo, again, if you would, briefly describe
7 the items just because now the jury can see what you are
8 speaking about; that is 265B, starting with this box here.

9 A. Okay. That box is Exhibit 265B. And it is an
10 expended bullet with the original slide box that I
11 collected at the crime scene on Timberline. It reflects
12 Lab Item No. 17.

13 Q. Thank you. What is this dark item here that I'm
14 pointing to?

15 A. That is the expended bullet, Item 17.

16 Q. I'm now going to place Exhibit 266B on the overhead
17 projector.

18 And again, can you just describe briefly the
19 items that are within the pouch labeled 266B.

20 A. Exhibit 266B is the original paper bag that this
21 evidence item was submitted in. Within that paper bag,
22 once I opened it, contained the slide box that was sealed.
23 That's next to the paper bag.

24 And once I opened that slide box, it contained
25 the evidence which is the expended bullet, Item No. 6.

1 Q. Thank you. I just want to ask you a few questions
2 about Item 6.

3 This is your signature, down here at the bottom
4 of 266A and 266B?

5 A. Yes.

6 Q. Thank you. And on the paper bag within 266B, are
7 those your initials: RS?

8 A. That's right.

9 Q. What does 2/24/10 refer to there?

10 A. That refers to February 24, 2010, the date that I
11 took custody of this evidence item.

12 Q. And on the slide box within 266B, there is a notation
13 Item No. 06. What does that refer to?

14 A. That is my handwriting. And I placed it on that
15 slide box, once I had removed it from the paper bag, to
16 reflect that that packaging belonged to the expended
17 bullet, Item No. 6.

18 Q. So Item No. 6, is that what the expended bullet was
19 labeled within the crime lab?

20 A. That's correct.

21 Q. And again, on the slide box, your initials: RS?

22 A. Correct.

23 Q. And the date of your examination: 2/24/10?

24 A. That's the date I took possession of that. Yes.

25 Q. Sir, what is a casing?

1 A. A casing is a component of a cartridge.

2 A cartridge is the ammunition that would be
3 placed into a weapon to be fired.

4 Q. And the casing is?

5 A. It is one of four components of a cartridge. The
6 casing is the main body of the cartridge.

7 Typically, a cartridge consists of four
8 components. The first one would be the projectile, or
9 bullet, that is seated at the front end of a cartridge,
10 and that is what would come down the barrel once the
11 weapon is fired.

12 The main body is the casing that holds the
13 bullet at one end.

14 And the third component is located inside that
15 casing, which is gun powder, or the propellant.

16 And the fourth component of the cartridge would
17 be a primer. And a primer is simply a small metal disk,
18 that is on the opposite end from the bullet of the casing,
19 that contains a little bit of explosive material.

20 Q. Were any casings found at the crime scene on February
21 17, 2010, into February 18, 2010?

22 A. None were recovered.

23 Q. And were any casings provided to the laboratory for
24 analysis in connection with the David Sandler murder
25 investigation?

1 A. No, there were not.

2 Q. What type of handguns eject casings when a bullet is
3 fired from them?

4 A. Typically, that would be a pistol.

5 Q. What types of handguns do not eject casings when a
6 bullet is fired from them?

7 A. Typically, it would be a revolver.

8 Q. With a revolver, what happens to a casing?

9 A. With a revolver, the way it is designed, once the
10 weapon is loaded and then subsequently fired, the casings
11 are retained within a portion of that weapon called the
12 cylinder. The cylinder is a round metal portion of that
13 weapon that has holes cut into them that would accept an
14 individual cartridge.

15 So those casings, once the weapon is fired, can
16 only be removed if you physically remove them with your
17 hands.

18 Q. Based upon your examination of the expended bullet
19 that you found at the scene on February 17 and into
20 February 18, 2010, which was labeled Item No 17 by the
21 laboratory and is within Government Exhibit 265B, what is
22 your expert opinion as to the likelihood that a revolver
23 was used to fire that bullet?

24 A. That type of bullet is typically a revolver-type
25 round.

1 Q. And the same question for Lab Item No. 6, which is
2 within Government Exhibit 266B, which was recovered and
3 sent into the lab subsequently.

4 What is your expert opinion as to the likelihood
5 that a revolver was used to fire that bullet?

6 A. It was highly likely that it was a revolver used.

7 Q. Sir, now I want to draw your attention to a different
8 date: to February 5 of 2010.

9 Did you respond to a crime scene on that date?

10 A. Yes, I did.

11 Q. Where was that crime scene?

12 A. That crime scene was in a wooded area near Windsor
13 Place in Central Islip.

14 Q. At approximately what time did you arrive there?

15 A. Approximately 9 am.

16 Q. Did you assist in the recovery of any ballistic
17 evidence at that scene?

18 A. Yes, I did.

19 Q. What ballistic evidence was recovered at that scene?

20 A. At that location the laboratory recovered three
21 expended shell casings, one expended bullet, and one
22 expended shot shell.

23 Q. And as to that, you called it a shot shell?

24 A. Yes.

25 Q. What does that mean?

1 A. A shot shell, expended shot shell, is a, was
2 originally a component of a shotgun shell cartridge that
3 would be placed into a shotgun to be fired.

4 Q. And what, if any, determination did you make at the
5 scene about that expended shotgun shell?

6 A. That expended shell was collected and retained by the
7 laboratory, but it was probably not involved with the
8 incident that we were investigating due to the physical
9 condition of it. It has a lot of rust on the gun shell.

10 Q. Thank you. Now, did you transport the items of
11 ballistics evidence back to the crime laboratory?

12 A. Yes.

13 Q. Did you do that on February 5, 2010?

14 A. That's correct.

15 Q. And what did you do with the bullet, the evidence
16 upon arriving back at the crime laboratory?

17 A. Once I returned to the lab, with the assistance of my
18 other two team members the evidence was logged into our
19 computer and then the ballistic evidence was placed in the
20 firearms main vault, which is a secure area of the crime
21 laboratory.

22 Q. Sir, I'm now going to show you what's been marked as
23 Government Exhibits 111A, 111B, and 111C.

24 Do you recognize the items within those plastic
25 pouches?

1 A. Yes.

2 Q. How do you recognize them?

3 A. I recognize that there are four slide boxes and the
4 paper bag. They have my initials on them as well as the
5 other members of the crime lab response unit that
6 responded to the scene in Central Islip.

7 It has the date, February 5, and the central
8 complaint number that is unique to this investigation, on
9 them.

10 Q. Let me break it down only because within that one
11 plastic pouch we have three separate exhibits labeled, so
12 let's just take them in order.

13 Government Exhibit 111A, what do you see in
14 there?

15 A. Exhibit 111A contains two laboratory envelopes that
16 were prepared by a firearms examiner who I work with,
17 Charles Hopkins.

18 There are also two Ziploc bags. One of them
19 contains three expended shell casings, and the other
20 contains an expended bullet.

21 Q. All right. Then moving down to 111B, what is within
22 that exhibit?

23 A. 111B is a paper bag that has the laboratory label
24 with the case identification number on it and one of my
25 team member's initials.

1 This bag contained the three expended shell
2 casings and one expended bullet that were recovered at the
3 scene. They were placed into this paper bag once we
4 returned to the laboratory. And this bag was then placed
5 in the firearms vault.

6 Q. Is there a date on that paper bag within Government
7 Exhibit 111B?

8 A. Yes.

9 Q. What is the date on the paper bag, evidence bag?

10 A. The date on the seal, on the evidence tape where it
11 was signed and sealed, is February 6, 2010.

12 Q. Then turning to Government Exhibit 111C. What do you
13 recognize in there?

14 A. In 111C there are four slide boxes that my initials
15 are contained on them. These were the original packaging,
16 the slide boxes that we used to collect the physical
17 evidence at the crime scene.

18 MS. CAPWELL: Your Honor, the government moves
19 to admit Government Exhibits 111B and 111C.

20 MS. MACEDONIO: May I see them for a moment?

21 THE COURT: Sure.

22 MS. MACEDONIO: May I have a brief voir dire?

23 THE COURT: Sure.

24 VOIR DIRE EXAMINATION

25 BY MS. MACEDONIO:

1 Q. The packaging that this is in, the overall packaging,
2 this is prepared for trial litigation?

3 A. Yes, it is.

4 Q. Your office breaks this down so that it is one
5 package; anything that came inside this envelope is now
6 inside this clear plastic package?

7 A. That's correct.

8 MS. MACEDONIO: I have no objection, judge.

9 THE COURT: Just B and C?

10 MR. DURHAM: Yes, your Honor.

11 THE COURT: Government Exhibits 111B and 111C
12 are admitted.

13 MS. RANTALA: No objection, your Honor.

14 THE COURT: I'm sorry, Miss Rantala.

15 (Government Exhibits 111B and 111C in evidence.)

16 DIRECT EXAMINATION (Continued)

17 BY MS. CAPWELL:

18 Q. And, sir, as to the ballistic evidence that was
19 recovered on February 5, 2010, at that crime scene, did
20 you conduct any of the ballistics examinations of that
21 evidence?

22 A. No, I did not.

23 MS. CAPWELL: Your Honor, the government has no
24 further questions.

25 THE COURT: Cross-examination?

1 MS. MACEDONIO: I have no questions of the
2 witness.

3 MS. RANTALA: Yes, your Honor, please.
4

5 CROSS-EXAMINATION

6 BY MS. RANTALA:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. For my own clarification, you are talking about doing
10 a comparison of two spent projectiles. Correct?

11 A. Yes, I did.

12 Q. From my understanding, they are Exhibits 266B --
13 right?

14 A. Yes, I believe it was.

15 Q. -- and whatever exhibit number ended up being the
16 item No. 17 from the parking lot. Correct?

17 A. That's correct.

18 Q. What is your understanding of where 266B came from,
19 exactly?

20 That was the other one you compared it to?

21 A. That was submitted to the laboratory from the Suffolk
22 County Police Department.

23 Q. So that was not an item you personally, your team,
24 collected from the Brentwood scene?

25 A. No, we did not collect that one.

1 Q. Okay. So that is just clarification for that.

2 Now, you testified on direct that the markings
3 on these two expended projectiles were approximately the
4 same. Correct?

5 A. The measurements of the land and groove widths were
6 approximately the same.

7 Q. Approximately the same, that was the term you used,
8 the lands and grooves?

9 A. That's correct.

10 Q. Correct? Okay.

11 And you testified also on direct that the
12 material that both expended projectiles were made of was
13 similar. Correct?

14 A. That's correct.

15 Q. The word *similar*.

16 And you also testified that the make and model
17 that equipment come from is similar. Both those expended
18 projectile1s came from a similar make and model gun.

19 MS. CAPWELL: Objection, your Honor.

20 THE COURT: Overruled.

21 A. I said it was possible that they were both fired from
22 the same weapon because of their measurements. They were
23 in the same category.

24 BY MS. RANTALA:

25 Q. Okay. You did not say that it was absolutely coming

1 from the same gun. Correct?

2 A. Definitely not.

3 Q. Definitely not coming from the same gun?

4 A. No. No, I definitely did not say that they were from
5 different guns.

6 Q. Okay. So they could just as easily have come from
7 two separate, totally separate guns. Correct?

8 A. That would be correct.

9 Q. And you don't really know when those projectiles were
10 placed in those particular locations. Correct?

11 A. An absolute time? No, I do not.

12 Q. Okay. So they could have come from totally separate
13 guns, you just testified. Correct?

14 A. It would be -- I couldn't rule that out.

15 Q. And they could have come from totally different time
16 periods. Correct?

17 A. Yes. I have no reference of time.

18 Q. And as far as these guns being of similar make and
19 model --

20 MS. CAPWELL: Objection, your Honor. That is
21 mischaracterizing his testimony.

22 THE COURT: The witness can say. When asked a
23 question, he can say whether it is a correct
24 characterization or not. Okay?

25 THE WITNESS: Okay.

1 BY MS. RANTALA:

2 Q. You testified on direct we have just reviewed that
3 the projectile, expended projectile, could have come from
4 a similar make and model of a gun.

5 MS. CAPWELL: Objection.

6 THE COURT: Let him answer it.

7 Go ahead.

8 A. Yes, that's possible.

9 BY MS. RANTALA:

10 Q. That's possible. Now, you had done a -- or prepared
11 a report, correct, for the crime laboratory?

12 A. That's correct.

13 Q. Regarding your analysis of those two expended
14 projectiles. Correct?

15 A. Correct.

16 Q. And you had work papers attached to that report?

17 A. That's correct.

18 Q. You also include a listing of various weapons to that
19 work paper bunch, like a two-page list of weapons?

20 A. That is correct.

21 Q. Are those -- and how many weapons -- do you need to
22 refresh your recollection on this or do you know, about
23 those two pages of weapons?

24 A. I'm aware that I do have two pages of notes. As to
25 how many weapons are listed on that, I do not know.

1 Q. Okay. Would it refresh your recollection if I
2 brought it to you?

3 A. Sure.

4 Q. Okay. That is your report. Correct?

5 A. That is correct.

6 Q. And are these in fact work papers associated with
7 that report?

8 A. Yes.

9 Q. Continuing on, another work paper associated with
10 that report. If I can flip the page. And another work
11 paper?

12 A. Yes.

13 Q. All right. Are the -- are the next two pages also
14 part of the work papers of that report?

15 A. Yes, they are.

16 Q. And does that consist of a number of different
17 weapons?

18 A. Yes, it does.

19 Q. Are all of those, weapons that that projectile, those
20 two expended projectiles, could have come from?

21 A. That would be accurate.

22 Q. And approximately how many weapons -- if you want to
23 count, that's okay -- would be on just page 1 of that
24 particular list?

25 A. There's about 17 different models.

1 Q. That's just page 1 of the two-page list. Correct?

2 A. Yes.

3 Q. Would there be approximately the same number of
4 weapons on the second page of that list?

5 A. Can I look at it?

6 Q. Please.

7 MR. TIERNEY: Judge, the government will
8 stipulate that there are approximately 34 weapons.

9 THE COURT: Okay.

10 A. There is about ten different on this.

11 BY MS. RANTALA:

12 Q. So we are talking approximately 27 different weapons
13 altogether on those two lists?

14 A. Yes. That's possible.

15 Q. Would that be a fair statement?

16 A. Yes.

17 Q. So approximately 27 different weapons those expended
18 projectiles could have come from?

19 A. I would not be able to rule those out without having
20 a weapon to compare against those expended bullets.

21 Q. And each expended projectile could have come from a
22 different one of those weapons on those lists. Correct?

23 That would also be a fair statement. Correct?

24 A. I would have to say yes.

25 Q. All right. And you mentioned you don't have a weapon

1 to actually compare the expended projectiles with.

2 Correct?

3 A. None was submitted.

4 Q. And you had testified that the examination failed to
5 reveal enough individual markings to ascertain if they had
6 or had not been fired in the same weapon. Correct?

7 A. That's correct.

8 Q. And that's directly in a line from your report?

9 A. Yes, it is.

10 Q. So basically, there is no match, really, with any
11 certainty.

12 A. No, I could not match those.

13 Q. Okay. Now, you had testified also on direct about
14 the same crime scene regarding casings or no casings.
15 Correct?

16 A. Yes.

17 Q. And that in your experience if there are no casings,
18 that could mean a revolver was used. Right?

19 A. That's one possibility.

20 Q. So it doesn't necessarily mean that a revolver was
21 used, either. Does it?

22 A. The lack of finding casings: Is that the question?

23 Q. Yes.

24 A. No, that doesn't necessarily mean that a revolver was
25 used.

1 Q. So it could have been picked up; disappeared; any
2 number of possibilities. Correct?

3 A. Yes. That's possible.

4 Q. But when there are casings, I believe your testimony
5 was that it is a pistol?

6 A. Typically, a pistol.

7 Q. Typically, a pistol. But that is not even a
8 certainty. Correct?

9 A. I would never say that *this is an absolute* to
10 anything.

11 Q. All right. So essentially it is a fair statement to
12 say there is no certainty with regard to the analysis of
13 these project -- or expended projectiles at that crime
14 scene. Correct?

15 A. I'm not sure I understand your question.

16 Q. Would it be a fair statement to say that there are no
17 certainties regarding the analysis or comparison of those
18 two expended projectiles at the Brentwood crime scene?

19 MS. CAPWELL: Objection.

20 THE COURT: Do you understand the question?

21 THE WITNESS: I'm not sure I do, sir.

22 THE COURT: Can you rephrase the question.

23 BY MS. RANTALA:

24 Q. I will break it down a little bit.

25 You compared two expended projectiles. Right?

1 A. Correct.

2 Q. You are not certain that they came from the same
3 weapon.

4 A. That's correct.

5 Q. And no certainty whether they came from a revolver or
6 pistol?

7 A. I'm pretty certain, based on my experience and the
8 type of expended components those are, that they were from
9 a revolver.

10 Q. But they could have been from a pistol.

11 A. I can't think of a pistol that shoots that
12 ammunition, but I just simply don't know.

13 Q. So there is no certainty regarding that, either.

14 A. It is highly unlikely it was a pistol. I mean, it
15 was highly unlikely it was a pistol.

16 Q. But would you agree that if the casings were picked
17 up by tires or something else, that that would change your
18 analysis? Correct?

19 A. I just can't think of a weapon, a semiautomatic
20 pistol weapon, that would take that kind of ammunition and
21 eject those kind of casings. They are almost certainly
22 from a revolver.

23 Q. But not 100 percent certain?

24 A. Not 100 percent certain.

25 Q. Okay. Thank you.

1 MS. RANTALA: May discuss with cocounsel for
2 just one moment?

3 THE COURT: Sure.

4 (There was a pause in the proceedings.)

5 MS. RANTALA: No further questions. Thank you.

6 MS. CAPWELL: I have a brief redirect, please.

7 THE COURT: Okay.

8 MS. CAPWELL: May the record reflect I'm just
9 waiting for defense counsel.

10 THE COURT: Go ahead.

11 MS. CAPWELL: Thank you, sir.

12

13 REDIRECT EXAMINATION

14 BY MS. CAPWELL:

15 Q. Mr. Sineo, do you recall Miss Rantala asked you
16 questions about the possibility of the two expended
17 bullets coming from different weapons?

18 A. Yes, I recall that.

19 Q. Is it fair to say that you cannot rule out the
20 possibility that both those expended bullets were fired
21 from the same weapon?

22 A. I cannot rule that out.

23 Q. Turning briefly back to Lab Item No. 17 within
24 Government Exhibit 265B.

25 That is a bullet you located at the scene.

1 Correct?

2 A. That's correct.

3 Q. And that was within the crime scene.

4 A. Yes, it was.

5 Q. And you found that it was originally a component of a
6 .38 or .357 class caliber cartridge. Correct?

7 A. That's correct.

8 Q. Are you sure of that finding?

9 A. Yes, I am.

10 Q. Did you also find, as to that expended bullet, that
11 it exhibited five lands and grooves?

12 A. That's correct.

13 Q. And are you certain as to that finding?

14 A. I'm certain.

15 Q. And you also found that it exhibited conventional
16 rifling with a right-hand twist. Correct?

17 A. That's correct.

18 Q. Are you certain as to those findings?

19 A. I am certain.

20 Q. And as to Government Exhibit 66B, the expended bullet
21 within that exhibit, which is Lab Item No. 6.

22 Did you make the same finding during your
23 examination as to that expended bullet?

24 A. Yes, I did.

25 Q. And are you certain about those findings?

1 A. Yes, I am certain.

2 MS. CAPWELL: No further questions.

3 THE COURT: Anything further?

4 MS. RANTALA: Nothing further.

5 THE COURT: You can step down.

6 (The witness was excused.)

7 THE COURT: Next witness.

8 MR. DURHAM: The government calls

9 Jannette Talavera.

10 May we approach briefly?

11 THE COURT: Yes.

12 (Discussion at sidebar ensued as follows.)

13 MR. DURHAM: This is the linguistics witness.

14 She prepared translations of statements made by these
15 defendants.

16 We are not going to offer the Spanish
17 statements. We are going to show them to witness for
18 identification. She will review those and then say she
19 used that to prepare an English translation. I will then
20 offer that subject to connection but will not move to
21 publish at this time.

22 We're going to do that and then bring these
23 items into evidence. We'll have her testify first so that
24 when the detectives and agents who conducted the
25 interviews testify, we will then be able to publish it

1 won't the once the foundation is laid for the underlying
2 Spanish statements.

3 I just want to raise it to avoid objections and
4 sidebars during the testimony.

5 MR. LONDON: We are not waiving objections in
6 advance.

7 THE COURT: No. It is just if you have an
8 objections to the procedure, in other words.

9 MR. LONDON: No, we don't.

10 MR. LEVINE: Subject to connection.

11 MR. LONDON: We don't object to the procedure,
12 your Honor.

13 MS. RANTALA: I also understand, because you had
14 given us a couple of 3500 items discussing items found in
15 my client's residence, you are not going to touch any of
16 that. That is my understanding.

17 MR. DURHAM: You said 3500 material?

18 MS. RANTALA: Yes.

19 THE COURT: Items seized?

20 MS. RANTALA: Yes.

21 MR. DURHAM: There were exhibits seized but not
22 3500 material seized.

23 THE COURT: Did she translate anything from that
24 seizure?

25 MR. DURHAM: There was a letter and a number of

1 articles recovered during the arrest, which she is
2 translating.

3 MS. RANTALA: Are you seeking to admit that,
4 too?

5 MR. DURHAM: Not through her, but that is along
6 the lines of something I will show her for identification.
7 She prepared the translation.

8 THE COURT: It sounds like a procedure to me.

9 You are not going to offer anything. You are
10 just laying a foundation so that when the law enforcement
11 officers testify, that they will be able to utilize them
12 without having to then call the linguistics expert.

13 MR. DURHAM: That's right. As opposed to
14 calling each of the law enforcement officers and then
15 calling the linguistics witness again --

16 MR. LONDON: There is one item that I think we
17 would like a ruling on now; that is, a copy of a letter
18 received are by Carlos Ortega, not written by him. We
19 fail to see how that is relevant.

20 MS. RANTALA: It is one of the items from his
21 residence.

22 MR. LONDON: That was sought to be translated.

23 MR. DURHAM: It is a letter written by another
24 MS-13 gang member in 2008.

25 THE COURT: Why don't we do this, Mr. London.

1 If she is not going to say what the letter is, I think it
2 is okay.

3 MR. LONDON: We will rule at a later time then?

4 THE COURT: Yes.

5 MR. DURHAM: Thank you.

6 (Discussion at sidebar was concluded.)

7 THE COURT: Can we have the witness?

8

9 **JANNETTE TALAVERA**

10 called by the government, having been first duly
11 sworn/affirmed, was examined and testified as
12 follows:

13 THE COURT: Ms. Talavera, if you could, just
14 move a little closer to the mic. And keep your voice up
15 so that everybody can hear you.

16 MR. DURHAM: Your Honor, may I approach the
17 witness briefly?

18 THE COURT: Yes.

19

20 **DIRECT EXAMINATION**

21 **BY MR. DURHAM:**

22 Q. Good afternoon.

23 A. Hi.

24 Q. What do you do for a living?

25 A. I'm a translator for the FBI.

- 1 Q. How long have you been doing that?
- 2 A. 13-and-a-half years.
- 3 Q. 13-and-a-half?
- 4 A. Yes.
- 5 Q. And prior to joining the FBI, what did you do for a
- 6 living?
- 7 A. I was a New York City police officer.
- 8 Q. How long were you a police officer?
- 9 A. For five-and-a-half years.
- 10 Q. And while you were working for the New York City
- 11 Police Department, where were you assigned?
- 12 A. New York City Transit District 30.
- 13 Q. And ma'am, what languages do you speak?
- 14 A. Spanish and English.
- 15 Q. Can you explain to the jury how you learned to speak
- 16 Spanish.
- 17 A. My parents spoke Spanish at home.
- 18 Q. And were you born in the United States?
- 19 A. Yes, I was.
- 20 Q. What about your parents? Where are they from?
- 21 A. My parents are from Puerto Rico.
- 22 Q. And obviously, you also learned to speak English?
- 23 A. Yes, sir.
- 24 Q. Is that in school?
- 25 A. That was in school. Yes.

1 Q. And when you applied to the FBI, did you have to take
2 any tests to judge your Spanish ability?

3 A. Yes, I did.

4 Q. What types of tests?

5 A. We took a battery of tests: reading, writing,
6 listening, comprehension.

7 Q. And did you pass those tests?

8 A. Yes, I did.

9 Q. And since, you have been working for the FBI for 13
10 years as a linguist or a translator?

11 A. Yes.

12 Q. Now, at some point were you asked to prepare any
13 translations in connection with this case?

14 A. Yes, I was.

15 Q. And specifically with respect to these two
16 defendants, what were you asked to translate?

17 A. I translated documents, confessions --

18 MS. MACEDONIO: Objection.

19 MR. LONDON: Objection.

20 THE COURT: Sustained. The jury will disregard
21 the use of the terms.

22 Just describe what types of documents. Don't
23 classify them. Okay?

24 A. Documents. Letters. Documents from El Salvador.
25 Newspaper articles.

1 BY MR. DURHAM:

2 Q. And can you explain to the jury generally, when
3 you're given a document to translate, what your process
4 is.

5 A. When I'm given a document, I submit it to my
6 supervisor and he assigns a job number. I produce a cover
7 letter, cover sheet, and I proceed to read it. And then
8 start translating it.

9 Q. And in this case, the documents you were asked to
10 translate, what language were you asked to translate them
11 from?

12 A. From Spanish into English.

13 Q. And once you prepared a translation, what if any
14 quality control is done on that document?

15 A. If the document is going to be required to be
16 presented in court, then we have a peer of mine review it.

17 Q. And just generally, what is a peer review?

18 A. It is just to make sure that there are, you know, no
19 misspellings or anything is missing. It is accurate for
20 court.

21 Q. Now I ask you to look in front of you, I left a
22 number of documents there, and turn first to a document
23 that has been labeled Government Exhibit 401.

24 Do you recognize that?

25 A. Yes, I do.

1 Q. What is it?

2 A. It is a handwritten letter, document.

3 Q. Is it a written statement?

4 A. Yes.

5 Q. What language is that statement?

6 A. In Spanish.

7 Q. And prior to coming to court today, have you seen
8 that written statement?

9 A. Yes.

10 Q. And what if anything did you do with that written
11 statement?

12 A. I read it thoroughly and I translated it into
13 English.

14 Q. And I would ask you to look at the next document,
15 which has been marked as Government Exhibit 402.

16 Do you recognize that?

17 A. Yes, I do.

18 Q. What is Government Exhibit 402?

19 A. It is another handwritten letter in Spanish.

20 Q. And who prepared that?

21 A. Who wrote it?

22 Q. Looking at -- are you look at 402?

23 A. Oh. Sorry. Okay, yes, 402. That is my --

24 Q. Let's rewind.

25 Government Exhibit 402: What is that?

1 A. That is my work.

2 Q. That is your work?

3 A. Translation.

4 Q. And is that a translation of Exhibit 401?

5 A. Yes, it is.

6 Q. And you prepared that?

7 A. Yes.

8 Q. And is it a fair and accurate translation of
9 Exhibit 401?

10 A. Yes, it is.

11 Q. And was that reviewed by a peer?

12 A. Yes, it was.

13 MR. DURHAM: Your Honor, at this time the
14 government would offer Exhibit 402 subject to connection.

15 MR. LONDON: Objection. There is no way we can
16 rule on that.

17 THE COURT: Yes. Rather than admit it subject
18 to connection, we will do what we did with the other
19 exhibit, hold off admitting it and do it through the next
20 witness.

21 MR. DURHAM: May we approach, your Honor?

22 (Discussion at sidebar ensued as follows.)

23 THE COURT: I don't know what the purpose is of
24 admitting it subject to connection. What is the problem
25 with just waiting to admit it when the appropriate witness

1 is testifying?

2 MR. DURHAM: There isn't any, your Honor. I
3 just want to be clear. There are two sets of objections
4 here. One is that we haven't laid a proper foundation
5 through this witness. I just want to make sure that --

6 THE COURT: You don't have to recall her.

7 MR. DURHAM: Exactly.

8 I understand they are objecting to the document
9 coming in right now because foundation hasn't been laid
10 for the underlying Spanish statement. I just want to make
11 sure that is the objection. So when I offer it subject to
12 connection, when I say subject to connection, that
13 essentially says we have laid a proper foundation.

14 THE COURT: I have it.

15 Is there any objection to the foundation she
16 laid for her work?

17 MR. LONDON: None. But I don't understand why
18 it is being offered. You can't really offer it.

19 THE COURT: I just want to make sure. When you
20 say objection --

21 MR. LONDON: No, we are not objecting to her
22 procedure. We're just saying there is no way we can --

23 THE COURT: I got it. But at the same time --

24 MS. RANTALA: Yes.

25 MR. DURHAM: We just don't want to recall her

1 because they say well, you didn't ask her this question.

2 THE COURT: That is not what they are saying.

3 MR. DURHAM: Okay.

4 (Discussion at sidebar was concluded.)

5 BY MR. DURHAM:

6 Q. Please go to the next document that is in front of
7 you. It has been marked as Government Exhibit 403.

8 A. Yes.

9 Q. Showing you that for identification only, do you
10 recognize it?

11 A. Yes, I do.

12 Q. What is that document?

13 A. It is a handwritten letter document.

14 Q. What language is it written in?

15 A. In Spanish.

16 Q. And what if anything did you do to that document?

17 A. I read it thoroughly and then I translated it into
18 English.

19 Q. I ask you to look at the next document, Exhibit 404.

20 A. Yes.

21 Q. Do you recognize that document?

22 A. Yes, I do.

23 Q. What is it?

24 A. It is my translation into English.

25 Q. It is a translation of Exhibit 403?

1 A. Yes, it is.

2 Q. And did you prepare that translation?

3 A. Yes, I did.

4 Q. And again, was that reviewed by --

5 MS. MACEDONIO: Objection.

6 THE COURT: Yes. Sustained as to what another
7 colleague did.

8 BY MR. DURHAM:

9 Q. Was that document subjected to peer review?

10 A. Yes, it was.

11 MR. DURHAM: Your Honor, similarly we would
12 offer this subject to connection.

13 MS. MACEDONIO: Same objection, judge.
14 Objection.

15 THE COURT: Yes. The jury will disregard that:
16 peer review.

17 Unless another person testifies that they
18 reviewed it, then you should not consider that, okay?

19 Again, he is offering it subject to connection.
20 Sustained.

21 The objection is to the lack of connection.
22 Correct?

23 MS. MACEDONIO: Yes, your Honor.

24 MR. LONDON: Yes.

25 THE COURT: Okay.

1 MR. DURHAM: Thank you, your Honor.

2 BY MR. DURHAM:

3 Q. I would ask you to look at the next document before
4 you, Government Exhibit 301 for identification only.

5 Do you recognize that document?

6 A. Yes, I do.

7 Q. What is it?

8 A. It is another handwritten letter in Spanish.

9 Q. And what if anything did you do with that document?

10 A. I read it thoroughly and I translated it into
11 English.

12 Q. Look at Government Exhibit 302.

13 Do you recognize that?

14 A. Yes, I do.

15 Q. What is that document?

16 A. It is my translation into English of this
17 document, of 301.

18 Q. So 302 is a translation of 301?

19 A. Yes.

20 Q. Is it a fair and accurate translation?

21 A. Yes, it is.

22 MR. DURHAM: Your Honor, we would offer
23 Exhibit 302.

24 THE COURT: Same objection?

25 MS. MACEDONIO: Yes, your Honor.

1 MR. LONDON: Same objection.

2 THE COURT: Okay.

3 BY MR. DURHAM:

4 Q. I ask you to next look at a document which has been
5 marked as Government Exhibit 411A for identification only.

6 Do you recognize that document?

7 A. Yes, I do.

8 Q. What is it?

9 A. A Spanish letter, handwritten.

10 Q. What did you do with that document?

11 A. I also read it thoroughly and I translated it into
12 English.

13 Q. I would ask you to look at Exhibit 411B.

14 Do you recognize that document?

15 A. Yes, I do.

16 Q. What is 411B?

17 A. It is a translation of 411A into English.

18 Q. Who prepared that translation?

19 A. I did.

20 Q. Is that a fair and accurate translation?

21 A. Yes, it is.

22 MR. DURHAM: Your Honor, the government offers
23 Exhibit 411B at this time.

24 THE COURT: Same objection?

25 MS. MACEDONIO: Yes.

1 THE COURT: Mr. London, same objection?

2 MR. LONDON: Yes, judge. Thank you.

3 THE COURT: Okay.

4 BY MR. DURHAM:

5 Q. Next, I would ask you to look at what has been marked
6 as Government Exhibits 250A for identification only.

7 Do you recognize that?

8 A. Yes, I do.

9 Q. What is that item?

10 A. It is a handwritten document in Spanish.

11 Q. What did you do with that document?

12 A. I read it thoroughly and translated it into English.

13 MR. LONDON: Excuse me. What is that number?

14 MR. DURHAM: 250A.

15 BY MR. DURHAM:

16 Q. Ma'am, looking in front of you, do you have other
17 document, marked 250B?

18 A. Yes.

19 Q. What is that?

20 A. It is my English translation from 250A.

21 Q. You prepared that document?

22 A. Yes, I did.

23 Q. Is it a fair and accurate translation?

24 A. Yes, it is.

25 MR. DURHAM: Your Honor, the government offers

1 Exhibit 250B.

2 MS. MACEDONIO: Same objection.

3 MS. RANTALA: Same objection.

4 THE COURT: Okay.

5 BY MR. DURHAM:

6 Q. And next, I'd ask you to look at what has been marked
7 as Government Exhibit 284.

8 Do you recognize that?

9 A. Yes.

10 Q. What is it?

11 A. It is a handwritten document in Spanish.

12 Q. Again, what if anything did you do with that
13 document?

14 A. I read it thoroughly and I translated it into
15 English.

16 Q. I would ask you to look at Government Exhibit 284A.

17 THE COURT: What was the number of the one she
18 just referred to?

19 MR. DURHAM: 284. It has no letter.

20 THE COURT: Yes.

21 BY MR. DURHAM:

22 Q. Do you recognize Government Exhibit 284A?

23 A. Yes, I do.

24 Q. What is it?

25 A. My translation into English.

1 Q. You prepared that?

2 A. Yes, I did.

3 Q. And is that a translation of Exhibit 284?

4 A. Yes, it is.

5 Q. Is it fair and accurate?

6 A. Yes, it is.

7 MR. DURHAM: Again, the government offers
8 Exhibit 284A.

9 THE COURT: Same objection?

10 MS. MACEDONIO: Yes, your Honor.

11 MS. RANTALA: Same objection, your Honor.

12 THE COURT: Just so the jury understands.

13 I have sustained the objection to each of these.

14 The objection is to the lack of connection of
15 the document that she translated. The government has to
16 authenticate the document translated, and if they do that,
17 then the Spanish document will come in. At that point
18 they can seek to introduce the English translation.

19 But the underlying Spanish documents are not in
20 evidence yet, so that is why I'm sustaining the objection.

21 MR. DURHAM: Thank you, your Honor.

22 BY MR. DURHAM:

23 Q. And finally, would you take a look at what has been
24 marked as Government Exhibit 240 for identification only.

25 A. Yes.

1 Q. What is that item?

2 A. A newspaper article written in Spanish.

3 Q. And what if anything did you do with that exhibit?

4 A. I read it thoroughly and translated it into English.

5 Q. And the last document before you, that has been
6 marked as Government Exhibit 240A, do you recognize that?

7 A. Yes.

8 Q. What is that?

9 A. It is my translation into English.

10 Q. Is it a fair and accurate translation?

11 A. Yes, it is.

12 MR. DURHAM: Your Honor, at this time the
13 government offers Government Exhibit 240A.

14 THE COURT: Same objection?

15 MS. MACEDONIO: Yes.

16 MS. RANTALA: Same objection.

17 THE COURT: Same ruling.

18 MR. DURHAM: No further questions.

19 THE COURT: Cross-examination?

20 MS. MACEDONIO: Thank you, your Honor.

21 MR. LONDON: May we just have a moment?

22 THE COURT: Yes.

23 (There was a pause in the proceedings.)

24 MR. LONDON: Thank you, judge.

25

1 CROSS-EXAMINATION

2 BY MS. MACEDONIO:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. I believe you testified on direct that you were born
6 in the United States. Is that correct?

7 A. Yes.

8 Q. And that both of your parents were from Puerto Rico?

9 A. Yes.

10 Q. So is it fair to say that Spanish was the primary
11 language spoken in your home when you were growing up?

12 A. In my home, yes.

13 Q. And did you go to school in the United States?

14 A. Yes, I did.

15 Q. And the primary language in your schools -- correct
16 me if I'm wrong -- would have been English.

17 Is that fair to say?

18 A. That's correct.

19 Q. And how far did you go in school?

20 A. I had two years of college.

21 Q. When you were going to school through those two years
22 of college, did you ever study Spanish?

23 A. Just basic, mandatory Spanish.

24 Q. So you didn't study Spanish as an advanced degree or
25 anything like that?

1 A. No.

2 Q. And now you work as a translator for the FBI. Fair
3 to say?

4 A. Yes.

5 Q. Did you have to go through any training or testing
6 for that?

7 A. I had to go through a battery of tests to be hired by
8 the FBI. Yes.

9 Q. Okay. So before the FBI hired you -- withdrawn.
10 Did the FBI hire you as a translator?

11 A. Yes.

12 Q. So that has been your primary position within the
13 FBI. You were never a Special Agent or anything like
14 that.

15 A. No.

16 Q. Right? You have always been a translator for the
17 FBI?

18 A. Correct.

19 Q. How long did you say you worked for the FBI?

20 A. 13-and-a-half years.

21 Q. Okay. Now, when you received these documents that
22 you just testified to, you received copies of the
23 documents. Is that correct?

24 A. Some were copies and some were originals.

25 Q. Okay. So sometimes you were getting a copy of

1 something. Correct?

2 A. Yes.

3 Q. And on other occasions, were you actually getting an
4 ink-written document?

5 A. Yes.

6 Q. So with regard to the copies, you wouldn't have been
7 able to tell if something had been altered before you got
8 it.

9 Is that fair to say?

10 A. That's fair to say.

11 Q. And with regard to the ink copies, if something had
12 been changed, you may or may not have been able to tell if
13 something had been altered. Right?

14 A. Right.

15 Q. Now, you get these documents to translate after they
16 have been generated. Right?

17 A. Correct.

18 Q. In other words, you are not present when the ink
19 copies are being provided. Right?

20 A. No.

21 Q. So you have absolutely no idea what the conditions
22 were when those statements were being provided. Right?

23 A. Correct.

24 Q. You don't have any idea if the statements were being
25 produced, let's say, under duress?

1 A. No.

2 Q. Right? You don't have any idea whether the words
3 that were put on that paper are true. Right?

4 A. Correct.

5 Q. And you have absolutely no idea what the writer's
6 intent would have been in putting those words on the
7 paper. Right?

8 A. That's right.

9 Q. Is that fair to say?

10 A. Yes.

11 Q. So you are just translating literally word for word.
12 Right?

13 A. Oh. I translate what is written in the document.

14 Q. And you do that accurately, corresponding to what has
15 been written?

16 A. What has been written. Yes.

17 Q. You are not trying to read in any particular meaning
18 or get an essence from it. You are just translating what
19 is on there. Right?

20 A. Right.

21 Q. And certainly, you couldn't tell us who wrote those
22 documents. Right?

23 A. I just identified them by -- they can identify
24 themselves in the document, but if that person was sitting
25 down writing it, I wouldn't know.

1 Q. So sometimes it might say: *My name is*
2 *Elizabeth Macedonio and I'm saying such and such.* But you
3 don't really know that I wrote that, right?

4 A. Right.

5 Q. And even if it said: *My name is Elizabeth Macedonio*
6 *and I state X, Y, and Z,* you don't know that that's true.
7 Right?

8 A. Correct.

9 Q. And you have no idea what would have prompted me to
10 put that on paper, if indeed I did so. Right?

11 A. Right.

12 Q. And certainly, you couldn't authenticate anybody's
13 handwriting. Fair to say?

14 A. No.

15 MS. MACEDONIO: I have no further questions,
16 Judge.

17 MR. LONDON: No questions.

18 MR. DURHAM: Nothing further, your Honor.

19 THE COURT: You can step down.

20 (The witness was excused.)

21 THE COURT: Next witness.

22 MR. TIERNEY: The government calls Jose Pastor
23 Avila.

24 Your Honor, may we approach?

25 THE COURT: Yes.

1 Why don't we take a break now. If you need to
2 break, let's just take the afternoon break now. Okay?

3 Don't discuss the case.

4 (The following ensued in the absence of the jury
5 at 3 pm.)

6 THE COURT: What did you want to discuss,
7 Mr. Durham?

8 MR. DURHAM: Your Honor, this witness found the
9 bodies of Vanessa Argueta and Diego Torres, so we need a
10 strong admonition from the court to delve into areas that
11 would be inconsistent with the court's rulings.

12 THE COURT: Is he in the courtroom?

13 MR. TIERNEY: No. He is in the waiting area.

14 THE COURT: Why don't you bring him in now and I
15 will give him the warning before the break.

16 MR. LONDON: Judge, while we have this break,
17 could I bring up an issue for next week?

18 THE COURT: Sure.

19 MR. LONDON: Next week, on Thursday, the
20 government has told me that they don't anticipate any
21 witnesses, it is not written in stone but they don't
22 anticipate any witnesses that will be against Carlos
23 Ortega.

24 I would ask if I could be excused on Thursday to
25 take care of another matter from this courthouse. My

1 client has said he understands and he agrees to it. Your
2 Honor may want to make an inquiry about it.

3 THE COURT: Yes. That is fine with me. Let me
4 do that.

5 Mr. Ortega, you heard Mr. London. Next Thursday
6 he is going to be handling another matter and won't be
7 present. Obviously, Miss Rantala will be present.

8 I just want to make sure that it is agreeable to
9 you, that he won't be here on Thursday.

10 Is that okay?

11 DEFENDANT ORTEGA: Yes.

12 MR. LONDON: Thank you, your Honor.

13 THE COURT: Is this the witness?

14 Good afternoon. I just want to -- you don't
15 have to sit down.

16 CASE AGENT: He doesn't speak English.

17 THE COURT: Please state your name for the
18 record.

19 THE WITNESS: Jose Avila.

20 THE COURT: I just wanted to make sure you
21 understand. I think the prosecution has explained this to
22 you, but I want to make sure you understand a ruling that
23 I have made.

24 I have determined, I have decided that the jury
25 should not know anything related to Diego Torres' age.

1 They are not to know that the victim was a child at all.

2 So when you are referring to -- what did you say
3 his role was?

4 MR. TIERNEY: Your Honor, he was the one who
5 found the bodies as he was walking to work.

6 THE COURT: So when you are referring to him,
7 you can't refer to him as *the child*, *the boy*, or anything
8 like that. You have to use another term.

9 I'm trying to think of what term to use.

10 MS. CAPWELL: Person?

11 THE COURT: *Person. The male.*

12 MR. TIERNEY: The male victim.

13 THE COURT: *The male victim.*

14 Is everybody okay with that?

15 MS. MACEDONIO: Fine.

16 MR. LONDON: Yes.

17 THE COURT: So whenever you are referring to his
18 body, you should just refer to it as *the male victim*.

19 Do you understand?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 MR. TIERNEY: And, your Honor, with regard to
23 that, my intention is to lead him around that area and
24 just touch upon it. Lead him to that point and then get
25 out, and that will be it.

1 THE COURT: Let's take a break.

2 (Recess taken at 3:10 pm.)

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1 (After recess the following occurred.)

2 THE COURT: Next witness?

3 MR. TIERNEY: Jose Avila, Jose Pastor Avila.

4

5 **JOSE PASTOR AVILA**

6 called as a witness, having been first duly sworn,

7 was examined and testified as follows:

8 THE CLERK: Please state your name and spell it
9 for the record.

10 THE WITNESS: My name is Jose Avila, J-O-S-E,
11 A-V-I-L-A.

12 THE COURT: Be seated, Mr. Avila. You may
13 continue.

14 MR. TIERNEY: Thank you, your Honor.

15

16 **DIRECT EXAMINATION**

17 **BY MR. TIERNEY:**

18 Q Sir, how old are you?

19 A 31 years old.

20 Q Where were you born?

21 A Honduras.

22 Q Do you speak English, sir?

23 A No.

24 Q Do you have a job?

25 A Yes.

1 Q Where do you work?

2 A I work at 120 Windsor Place, Central Islip.

3 Q And what is the name of that company?

4 A It is Freeport Paper.

5 Q And what kind of company is Freeport Paper?

6 A It's a pizza box company. It's a company that makes
7 boxes for pizzas.

8 Q And what is it that you do for that company, sir?

9 A My work is a forklift driver.

10 Q And how long have you been working at Freeport Paper?

11 A Ten years.

12 Q And back in February of 2010 were you working for
13 Freeport Paper?

14 A Yes.

15 Q And what were your hours of work back in February of
16 2010 at Freeport Paper?

17 A From 6:30 to 4:30.

18 Q That is a 6:30 in the morning to 4:30 in the
19 afternoon?

20 A Yes.

21 Q And how many days a week did you work?

22 A Monday through Saturday.

23 Q Now back in February of 2010, oftentimes how would
24 you get to work in the morning?

25 A At that time always walking.

1 Q And on your way to work is there a wooded area that
2 you would cut through to get to Freeport Paper?

3 A Yes.

4 Q And was there a path through this wooded area?

5 A Yes, there is.

6 Q And do you know where you would first enter this
7 wooded area?

8 A There is an entrance that connects to my place of
9 work.

10 Q And so you would go through that entrance, walk
11 through the woods, and then exit by your place of work?

12 A Yes, that's right.

13 Q Now I'm going to call your attention to February 5,
14 2010.

15 Did you walk to work that day?

16 A Yes.

17 Q Did you enter that wooded area on that day?

18 A Yes. I went in through there.

19 Q Would this be sometime shortly before 6:30 in the
20 morning?

21 A I think so.

22 Q And on February 5, 2010, as you were walking through
23 this wooded area, did you observe anything?

24 A Yes.

25 Q What did you observe?

1 A As I walked on my way to work through the path that I
2 had to go through there was a body.

3 Q And were you able to see whether the body was a woman
4 or a man?

5 A I was able to see that it was a woman.

6 Q And were you able to observe the clothes that the
7 woman was wearing?

8 A Yes.

9 Q What do you remember the woman wearing?

10 A She was wearing a red jacket and blue jeans.

11 Q And when you saw her in the woods, did you see her
12 move at all?

13 A No, no, she was not.

14 Q After you observed this, sir, what did you do?

15 A After I observed her, I got afraid and I ran to my
16 place of work.

17 Q And once you got to your place of work, did you speak
18 with anyone?

19 A Yes, I spoke with my boss.

20 Q And after you spoke with your boss, what did you do
21 next?

22 A We went back to that location to take another look at
23 the body again.

24 Q And so you went back with your supervisor?

25 A Yes. To see what was happening.

1 Q And when you went back into the woods, was the woman
2 still in the same location?

3 A Yes. She was there, yes.

4 Q And was she still not moving?

5 A Yes. She was still, sir.

6 Q And while you went back to check on the woman, did
7 there come a time when you and your supervisor observed
8 the body of a male victim?

9 A Yes, sir. When we got back there was not only one
10 body but two bodies.

11 Q And after you and your supervisor observed this, did
12 you call 911?

13 A Yes, we called. Yes, we did.

14 Q Who called 911?

15 A My boss.

16 Q And why was that?

17 A Because he knew how to speak more English.

18 Q And did you stay in that location and wait for the
19 police to arrive?

20 A Until the police arrived.

21 Q I'm going to ask that you take a look at a photograph
22 which has been marked as Government Exhibit 103.29 for
23 identification.

24 Do you recognize that, sir?

25 A Yes. It is the wooded area through which I get to my

1 place of work.

2 Q And is that the entrance to that wooded area?

3 A Yes. It is the exit to get to my work.

4 Q So that is the area where you walked through the
5 woods and you exit into your place of employment?

6 A Yes, that's right.

7 Q And does that photograph there accurately show what
8 that exit to the wooded area looked back on February of
9 2010?

10 A Yes, that's right.

11 MR. TIERNEY: Your Honor, I move that into
12 evidence at this time.

13 MS. MACEDONIO: No objection, your Honor.

14 MR. LONDON: No objection.

15 MR. TIERNEY: Actually, your Honor it's 103.29.

16 THE COURT: 103.29 in evidence.

17 (Government Exhibit 103.29 in evidence.)

18 BY MR. TIERNEY:

19 Q Mr. Avila, is that the exit from the woods?

20 A Yes, that's it, to get to my work.

21 Q I'm going to now ask that you take a look at
22 Government Exhibit 104.38.

23 Do you recognize what is depicted in that
24 photograph, sir?

25 A Yes.

1 Q What is depicted in that photograph?

2 A This is the entrance to get to the wooded area to get
3 to my work.

4 Q And does that photograph fairly and accurately depict
5 the way the entrance to the woods looked back in February
6 of 2010?

7 A Yes.

8 MR. TIERNEY: I would move that into evidence at
9 this time, your Honor.

10 MS. MACEDONIO: I have no objection, your Honor.

11 MR. LONDON: No objection.

12 THE COURT: This is 103 A as in apple?

13 MR. TIERNEY: I'm sorry, your Honor. I didn't
14 enunciate. It is 104.38.

15 THE COURT: All right, admitted.

16 (Government Exhibit 104.38 in evidence.)

17 BY MR. TIERNEY:

18 Q And sir, is that the entrance into the woods?

19 A Yes, that's it.

20 Q Next I'm going to show you what has previously been
21 marked as Government Exhibit 105.15.

22 And I'm going to ask you if you recognize what
23 is depicted in that photo?

24 A Yes.

25 Q What is depicted in that photograph, sir?

1 A That is the body I found when I was on my way to
2 work.

3 Q Does that fairly and accurately depict the way that
4 female body looked when you first saw it on February 5,
5 2010?

6 A Yes. That's right.

7 MR. TIERNEY: I would move Government Exhibit
8 105.15 into evidence at this time, your Honor.

9 MS. MACEDONIO: No objection, judge.

10 MR. LONDON: No objection.

11 THE COURT: 105.15 in evidence.

12 (Government Exhibit 105.15 in evidence.)

13 BY MR. TIERNEY:

14 Q Now you and your boss, you stayed in that area until
15 the police arrived?

16 A Yes.

17 Q Prior to finding the two dead people in the woods on
18 February 5, 2010, for how long had you been walking
19 through those woods?

20 A Always like two years back.

21 Q So you had been, prior to February 5, 2010, you used
22 to walk that route for two years?

23 A Yes.

24 Q And during the course of those two years of walking
25 back and forth to work, would you ever see people in the

1 woods hanging out, socializing?

2 A Yes, yes, in the summertime.

3 MR. TIERNEY: Thank you. I have no further
4 questions, your Honor.

5 THE COURT: Cross-examination?

6

7 CROSS-EXAMINATION

8 BY MS. MACEDONIO:

9 Q Good afternoon, Mr. Avila.

10 A Good afternoon.

11 Q Can you tell us how long you have been in this
12 country?

13 A Ten years.

14 Q And where did you -- where were you born?

15 THE INTERPRETER: I beg your pardon?

16 MR. LONDON: Where was he born.

17 THE INTERPRETER: Thank you.

18 A Honduras.

19 BY MS. MACEDONIO:

20 Q And during the ten years that you have been here, you
21 worked during that period of time. Is that correct?

22 THE INTERPRETER: Report?

23 MR. LONDON: Work.

24 THE INTERPRETER: Thank you.

25 A Yes.

1 BY MS. MACEDONIO:

2 Q And you use a Spanish interpreter. Is that correct?

3 A Yes.

4 Q Since you have been in this country for ten years,
5 ave you been able to pick up on any of the English
6 language?

7 A I understand a little bit.

8 Q A little, okay.

9 I'm going to show you what has been marked 3500
10 JPA-1.

11 Do you recognize the signature at the end of
12 this document?

13 A Yes.

14 Q Is that your signature, sir?

15 A It is my name and my boss.

16 Q This 3500 JPA-1, this is a document that has been
17 written in English. Is that correct?

18 A Yes.

19 Q But you don't read English, correct?

20 A No, I don't.

21 Q And was this the statement that you made to the
22 Suffolk County Police Department with regard to the
23 incidents that you just talked about?

24 A Yes, that's right.

25 Q And even though you don't speak or read in English,

1 they ask asked you to sign the document in English, right?

2 A That's right.

3 Q Now with regard to the Spanish language, you said you
4 came from Honduras. Is that correct?

5 A Yes, that's right.

6 Q And are you aware, sir, that people who speak Spanish
7 that are from different regions, let's say from El
8 Salvador or Honduras or Puerto Rico, they have different
9 dialects?

10 MR. TIERNEY: Objection, your Honor.

11 THE COURT: Sustained.

12 BY MS. MACEDONIO:

13 Q Let me ask you this, sir.

14 In conversing with other people in this country
15 who speak Spanish, do you sometimes have difficulty
16 understanding some of the terms that they use even though
17 they're speaking Spanish?

18 MR. TIERNEY: Objection, your Honor.

19 THE COURT: Sustained.

20 MS. MACEDONIO: I have no further questions,
21 judge.

22 MR. LONDON: No questions.

23 THE COURT: Redirect?

24 MR. TIERNEY: Yes, your Honor.

25

1 REDIRECT EXAMINATION

2 BY MR. TIERNEY:

3 Q Sir, during cross-examination you were asked about
4 the statement you gave to the police. Do you remember
5 those questions?

6 A Yes.

7 Q Do you remember giving that statement to the
8 detective with the Suffolk County Police Department?

9 A Yes, I remember.

10 Q Who was with you when you gave that statement to the
11 police?

12 A My boss.

13 Q And that is Marvin Yanez, correct?

14 A That's right, right.

15 Q And was that the same individual who called 911?

16 A That's right.

17 Q And he speaks English?

18 A Perfectly, yes.

19 Q What did Marvin Yanez do for you with regard to the
20 statement that you gave to the Suffolk County Police
21 Department?

22 A We gave the statement to the effect that I have found
23 a body.

24 Q But let me withdraw the question.

25 Did Marvin Yanez translate that statement for

1 you into Spanish?

2 A Oh, yes.

3 Q And I'm just going to show you what has been marked
4 as Government Exhibit 3500 PA-1. I'm sorry, 3500 JPA-1.

5 Do you recognize that, sir?

6 A Yes.

7 Q What is that?

8 A It is the information, what was read.

9 Q Is that the statement that you gave to the police on
10 February 5th?

11 A That's right.

12 MR. TIERNEY: I would move that into evidence,
13 your Honor, at this time.

14 MS. MACEDONIO: Your Honor, I would object.

15 THE COURT: Sustained.

16 MR. TIERNEY: Nothing further, your Honor.

17

18 RECROSS-EXAMINATION

19 BY MS. MACEDONIO:

20 Q You testified on direct that your boss translated for
21 you. Is that fair to say?

22 A Yes.

23 Q Did you also testify this afternoon that your boss
24 spoke more English. Do you remember that?

25 A Yes.

1 Q Your boss is primarily a Spanish speaker, correct?

2 A That's right.

3 Q And when your boss was translating for you, you had
4 to rely on him, not knowing if the translation was
5 correct. Is that fair to say?

6 A Yes.

7 MS. MACEDONIO: Thank you. No further
8 questions.

9 THE COURT: Anything further?

10 MR. TIERNEY: No your Honor, thank you.

11 THE COURT: You can step down.

12 Next witness?

13 MR. TIERNEY: Your Honor, may we approach just
14 briefly?

15 THE COURT: Yes.

16 (The following occurred at sidebar.).

17 MR. TIERNEY: The next witness is going to be the
18 crime scene who does the --

19 THE COURT: Why don't we ask the jury to take a
20 break.

21 MR. TIERNEY: Okay.

22 (The following occurred in open court.)

23 THE COURT: I apologize. We're going to have a
24 five minute break. So you can go back into the jury room.

25 (The jury left the courtroom.)

1 (The following occurred in open court.)

2 THE COURT: So there is an issue and you want me
3 to give the warning?

4 MR. TIERNEY: There is actually two issues, your
5 Honor. That, and also we are requesting the Court to
6 provide the jury with an instruction with regard to the
7 crime scene insofar as we're not showing any photos of the
8 Diego Torres pursuant to the Court's instruction. And we
9 don't want the jury to speculate as to some impropriety on
10 the part of the government.

11 So we would just ask, we are just requesting
12 that the Court give a brief explanatory instruction;
13 something to the effect that, you know, the defendant
14 Martinez is only charged with the murder of Vanessa
15 Argueta, and not the murder of Diego Torres. And
16 therefore I have instructed the government not to show any
17 photos, or something along that line.

18 THE COURT: I think that makes sense.

19 MS. MACEDONIO: I have had discussions with
20 Mr. Tierney about this. I do not intend to ask the crime
21 scene person any questions as to why he took pictures of
22 this and why he didn't take pictures of that.

23 To the extent that the Court wants to tell the
24 jurors that the government isn't required to put into
25 evidence every photograph that was taken at the crime

1 scene, I have no objection to that.

2 THE COURT: Would you rather me phrase it that
3 way? I could be more strong about it and say something to
4 the effect that neither of the defendants are charged with
5 respect to the murder of the Diego Torres. And I have
6 instructed the government not to put any evidence on with
7 respect to Mr. Torres.

8 MS. MACEDONIO: I agree. And I think it should
9 be both defendants, not just Martinez.

10 THE COURT: Okay. Do you want to bring the
11 witness in?

12 MR. TIERNEY: Yes, your Honor.

13 THE COURT: Sir, would you state your name for
14 the record.

15 THE WITNESS: Timothy Kelly.

16 THE COURT: Mr. Kelly, I just want to note, the
17 prosecutors have discussed it with you, but I just want to
18 emphasize to you that I have ruled that the jury should
19 not know the age of Diego Torres or the fact that he was a
20 child or a boy. They are not to know that at all.

21 So during course of your testimony, if it is
22 necessary to refer to him, you should refer to him either
23 by his name, Diego Torres, or the male victim, not
24 indicating his age or that he is a child. Do you
25 understand?

1 THE WITNESS: Yes, your Honor.

2 THE COURT: Okay. Bring the jury in.

3 (The jury entered the courtroom.)

4 THE COURT: Members of the jury, just let me
5 explain something to you. This witness and some other
6 witnesses during the course of the trial are going to be
7 testifying regarding the murder of Vanessa Argueta.
8 Neither of these defendants are charged with the murder of
9 Diego Torres. Neither of the defendants are charged with
10 that murder. Therefore, I have instructed the government
11 not to put on any evidence with respect to that murder
12 because it is not one of the charges in this case. Okay?
13 . Please state who you are calling next.

14 MR. TIERNEY: Yes, your Honor.

15 The government calls Suffolk County Police
16 Detective Timothy Kelly.

17

18 **TIMOTHY KELLY**

19 called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE COURT: Please state your name and spell
22 your last name for the record.

23 THE WITNESS: Timothy Kelly, K-E-L-L-Y.

24 THE COURT: Okay, just move closer to the mic so
25 it picks up your voice better.

1 Okay, thank you.

2 Go ahead, Mr. Tierney.

3 MR. TIERNEY: Thank you, your Honor.

4

5 DIRECT EXAMINATION

6 BY MR. TIERNEY:

7 Q Sir, by whom are you employed?

8 A Suffolk County Police Department.

9 Q And how long have you been employed by the Suffolk
10 County Police Department?

11 A 22 years.

12 Q And where are you currently assigned?

13 A Suffolk County Police Identification Section.

14 Q How long have you been assigned to the identification
15 section?

16 A Four years.

17 Q And what are your duties and responsibilities with
18 the identification section?

19 A Photographs, video documentation, and collection of
20 evidence at scenes.

21 Q And prior to that, detective, where were you
22 assigned?

23 A I was assigned briefly to the Fourth Squad as a
24 detective. And before that, six years at the Suffolk
25 County Police crime scene section.

1 Q So you were assigned to the Crime Scene Unit for six
2 years?

3 A Yes.

4 Q And what were your duties and responsibilities with
5 the Suffolk County Crime Scene?

6 A Working at the direction of the Suffolk County Police
7 detectives; photo and collection of evidence at their
8 direction.

9 Q What is the difference between, in the Suffolk County
10 Police Department between the crime scene section and the
11 identification section?

12 A As a detective in the identification section I'm also
13 a latent print examiner and I handle homicide and major
14 case felonies.

15 Q So in total how long have you been responding to
16 crime scenes for the Suffolk County Police Department?

17 A Ten years.

18 Q And during that ten year period, approximately how
19 many crime scenes have you responded to?

20 A I have responded to hundreds of crime scenes for the
21 Suffolk County Police Department.

22 Q Detective, I'm going to direct your attention to
23 February 5, 2010. On that date did you respond to a
24 homicide?

25 A Yes, I did.

1 Q Where was that scene located?

2 A At the rear of 111 Windsor Place, Central Islip.

3 Q Is that in Central Islip?

4 A Yes, it is.

5 Q And what caused you to respond to that location?

6 A We were notified of a homicide investigation, and at
7 the request of homicide to respond to that location to
8 process the scene.

9 Q And did you respond to that location with anyone else
10 from the identification section?

11 A Yes, I did, Detective-Sergeant Jambor and Evidence
12 Specialist Karen Oswald.

13 Q And again, what was your role or purpose in
14 responding to the scene that day?

15 A The role and purpose was to photograph, to video, and
16 to document any collection of evidence in coordination
17 with the Suffolk County crime lab.

18 Q And what was going to be your function?

19 A My function was to photo and to video, and to
20 document if there was any evidence for us as far as for
21 identification purposes.

22 Q And would you be working in conjunction with someone
23 else from the identification section?

24 A With Karen Oswald. I was actually the backup for
25 Karen Oswald. Karen Oswald was the lead identification

1 person assigned to this case.

2 Q And did you assist her with regard to the taking of
3 the photos?

4 A Yes I did.

5 Q And did you observe all the taking of the photos?

6 A Yes, sir.

7 Q And did you take notes in connection with all of the
8 photos that were taken?

9 A Yes, sir.

10 Q Currently where is Karen Oswald?

11 A Karen Oswald is assigned, she is in Afghanistan right
12 now as a latent print examiner.

13 Q And do you recall what time you and the other
14 identification section personnel got to the crime scene?

15 A 9:25.

16 Q Was the scene secure when you and the other personnel
17 got there?

18 A Yes, it was.

19 Q How was it secured?

20 A Third Precinct patrol had patrol vehicles there and
21 there was yellow tape up in the parking lot to the
22 entrance of the scene.

23 Q In addition to the Third Precinct officers
24 maintaining the scene, were there other detectives, and
25 police personnel on the scene?

1 A Yes. Homicide detectives had been at the scene.

2 Q And upon your arrival to the scene, could you just
3 briefly describe what the scene looked like to the members
4 of the jury?

5 A We pulled into the parking lot and they had the
6 yellow tape and the patrol vehicles securing the entrance
7 to a wooded area which was south of a building which was
8 Raymour & Flanigan.

9 Q Just let me show you what has already been placed in
10 evidence as 101.33.

11 And I just ask you if you recognize what is
12 depicted in that photograph?

13 A Depicted in this photo is the parking lot, the wooded
14 area and Pinewood Avenue.

15 Q Do you have the laser pointer?

16 A Yes, I do.

17 Q Could you just show us -- on the lower right-hand
18 portion of the picture there is a road. What is that
19 road?

20 A That's Pinewood Avenue.

21 Q And then on the left middle there is a parking lot
22 depicted.

23 A That is the parking lot to the rear of 111 Windsor
24 Place.

25 Q And where is the victim depicted in that photograph?

1 A This area here.

2 Q You're pointing to the approximately middle of the
3 wooded area between Pinewood and the parking lot at
4 Windsor Avenue?

5 A Yes, south.

6 Q Thank you, detective. You can turn around.

7 Now what is the first thing that you did upon
8 your arrival to that scene?

9 A Upon arrival I met with Detective Chase from the
10 homicide section, he is the scene detective for homicide.

11 And then we, we meet with him and in
12 coordination with him and the lab we discuss, we go
13 through the walk-through of the scene.

14 Q And so in addition to the homicide, as well as the
15 identification section, did personnel from the Suffolk
16 County crime lab respond as well?

17 A Yes, they did.

18 Q And do you remember who responded from the Suffolk
19 County crime lab?

20 A Forensic scientist Don Doller, forensic scientist Roy
21 Sineo, and foreign scientist Jim Caulkens.

22 Q And did, yourself, and members of both the homicide
23 and Suffolk County crime lab have a discussion?

24 A Yes, we did.

25 Q After that conversation, what did you do?

1 A At that time as a backup for Karen Oswald at the
2 scene, I have to go through the walk-through with the
3 homicide section and with the crime lab.

4 Q Could you describe to the members of the jury what a
5 walk-through is?

6 A The walk-through is; we now, we're the first ones to
7 walk through that scene. And we're going to walk through
8 there to document, you know, look for possible evidence,
9 initial evidence that we're going to process using a video
10 survey. And we're going to use photographs before any
11 placards, before anything is touched.

12 Q Just using Government Exhibit 101.33, could you with
13 the laser pointer, could you show the approximate route of
14 the walk-through that you did?

15 A We first walked through an entrance here. There was
16 another path. We walked down here to make sure that there
17 was, you know, we weren't sure of anything down this path.

18 We came around here. Pinewood Avenue went
19 through south. We came around, and then we were right
20 here in the middle of the scene and we walked out. And it
21 took, the walk-through ten took minutes.

22 THE COURT: So the record is clear, the witness
23 made a circle around, circular motion around the area of
24 the photograph.

25

1 BY MR. TIERNEY:

2 Q So is it fair to say there were two trails in that
3 wooded area?

4 A Yes.

5 The main path was from north to south. This is
6 the south entrance here. And there was a west path.

7 Q So and for the record, indicating a path north from
8 Windsor Place to Pinewood Avenue, and a path west from
9 Deer Park Road to Windsor Avenue?

10 A Yes.

11 Q And you indicated that it took you approximately ten
12 minutes to do that?

13 A Ten minutes.

14 Q Now did you encounter two bodies in the scene?

15 A Yes, we did.

16 Q Approximately where were they?

17 A They were right here south of the entrance that we
18 walked through in the gate right here. It was
19 approximately right in this area right here.

20 MR. TIERNEY: So for the record he is pointing
21 to approximately the center of the wooded area located in
22 the middle of Government Exhibit 101.33, your Honor.

23 THE COURT: Yes.

24 BY MR. TIERNEY:

25 Q Now who went on the walk through with you? Would did

1 you do that with?

2 A It was myself representing THE identification
3 section, from the homicide section was
4 Detective-Lieutenant Cosky (ph), Detective-Sergeant Doyle,
5 Detective Chase. And from the crime lab it was Forensic
6 Scientist Don Doller.

7 MS. MACEDONIO: Your Honor, the witness appears
8 to have a binder with documents that he is referring to.
9 Can we know what that is?

10 MR. TIERNEY: I didn't notice he was looking at
11 it.

12 THE COURT: If you have to refer to it to
13 refresh your recollection, just let the Court know, and
14 then you will say what document you're referring to, to
15 refresh your recollection with. Okay.

16 THE WITNESS: Okay.

17 MR. TIERNEY: Just for the record, your Honor,
18 it's his 3500 material, the identification paperwork.

19 BY MR. TIERNEY:

20 Q And detective, if you need to refresh your
21 recollection, if you could just ask the Court's
22 permission?

23 A Okay.

24 Q Now, after you did the walk-through of the scene,
25 what did you do next?

1 A After the walk-through at the scene we came back.
2 Now it's my turn to do the video survey of the scene. And
3 Karen Oswald and I go back and I discuss the scene with
4 her. We discuss the video, the video survey before
5 anything. We're the next two people coming in to do, to
6 video survey the scene.

7 Q And what areas of the scene did you survey with the
8 video?

9 A The same as the walk-through. That's the idea of the
10 walk-through. We walk through the same way on the video
11 when we are doing a video at the scene.

12 Q You don't have to do it.

13 And how long does that take?

14 A 20 minutes.

15 Q And after you did the video, what did you do next?

16 A After the video we came back and, you know we, Karen
17 Oswald now has to photograph and do all of the photography
18 at the scene.

19 Q And did you prepare the scene for photography?

20 A Yes, we did.

21 Prior to the actual video and photography,
22 because there were patrol cars there securing the scene
23 and with the tape, we have to put everybody back in the
24 parking lot. So this way we can't have any patrol
25 vehicles or anybody in the, you know, inside the video or

1 in the photographs.

2 Q So once the police personnel are moved back from the
3 scene, is the scene then photographed?

4 A Yes, it is. We actually make the scene larger than
5 we're able to walk through.

6 Q Do you remember what time you began photographing the
7 scene, detective?

8 A If I can just refer to my notes one second?

9 MR. TIERNEY: May he?

10 THE COURT: Yes. Just tell us what document by
11 number you're referring to, okay?

12 What document are you referring to, detective?

13 THE WITNESS: Referring to 3500-TK 1.

14 BY MR. TIERNEY:

15 Q What time did you start the photography of the scene?

16 A 11:49.

17 Q And what time did you finish?

18 A 5:30.

19 Q That is when you left the scene?

20 A That is when we left the scene.

21 Q Between 11:49 and 5:30 in the evening, what did you
22 do at that scene?

23 A During that scene we, when we did all of the
24 photography, we now walked back and let the lab know
25 because we're working in coordination with the lab. That

1 they can come in and start placing placards on evidence
2 that they're going to process.

3 Q And where are these placards placed?

4 A They're placed through the scene from the back, from
5 north to south.

6 Q And then when the placards are placed is the scenery
7 photographed?

8 A The scene is then re-photographed. And each evidence
9 item is also re-photographed with and without scale.

10 Q And then after the scene is photographed both without
11 and with placards, what happens next?

12 A The Medical Examiner, she responds, Doctor Hall. And
13 she examines the victims. And at that time she also
14 requested us to take additional photos as she is examining
15 the victims.

16 Q And were any items, were any items -- I'm sorry
17 withdrawn.

18 Was the identification section, was there any
19 request for you to dust any items of evidence for prints?

20 A Yes, there was. There was a cell phone that we were
21 asked to dust.

22 Q And what was the result of that, the dusting of that
23 cell phone?

24 A The result was we had negative results, not
25 sufficient for identification purposes.

1 Q I'm just going to ask that you take a look at some of
2 the photographs to your left, detective.

3 Would you look at what has been marked for
4 identification as Government Exhibit 103.34, 103.29,
5 104.2, and 104.4?

6 A Okay.

7 Q Do you recognize those four photographs?

8 A Yes, I do.

9 Q What do those four photographs depict.

10 A 103.34 was Raymour & Flanigan, which is north of the
11 path to the wooded area. So the wooded area would be
12 south of this building.

13 Q Okay, we will do those.

14 Are those photographs that you took of this
15 crime scene?

16 A Yes, they are.

17 Q Do they, do those four photographs fairly and
18 accurately depict those portions of the crime scene as
19 they existed on February 5, 2010?

20 A Yes, they do.

21 MR. TIERNEY: I would move them into evidence at
22 this time, your Honor.

23 MS. MACEDONIO: No objection, judge.

24 MR. LONDON: No objection, your Honor.

25 THE COURT: Make sure the numbers are right. I

1 have 103.3 4, 103.29, 104.2 and 104.4.

2 MR. TIERNEY: Correct, your Honor.

3 THE COURT: They're admitted into evidence.

4 (Government Exhibits 103.34, 103.29, 104.2, and
5 104.4? In evidence.)

6 BY MR. TIERNEY:

7 Q What is that a photograph of, detective.

8 A That's the Raymour & Flanigan building, 111 Windsor
9 Place. That's north of the wooded area.

10 Q The wooded area is, would be in the foreground of the
11 picture?

12 A Yes, it was.

13 Q I'm next going to show you what has been marked in
14 evidence as 103.29.

15 Do you recognize that photograph, detective?

16 A Yes, that's an overall of the entrance to the wooded
17 area.

18 Q Is that essentially a photograph taken in the
19 opposite direction as the other photograph was taken?

20 A Yes.

21 Q So that is taken from Raymour & Flanigan pointing
22 south into the entrance of the wooded area?

23 A Yes, sir.

24 Q Next I'm going to show you what has been marked as
25 104.2.

1 A That's a mid-range of the same photo.

2 What happens is, she walks a little closer, she
3 takes a mid-range. It's an overall mid-range.

4 Q By *she* you mean?

5 A Karen Oswald.

6 Q And 104.4.

7 A And we go to a close-up after that. That is the
8 entrance, so it's overall mid-range, and then close-up to
9 the entrance.

10 Q And now that is a close-up of, that is the entrance
11 to get into the woods for the Raymour & Flanigan parking
12 lot?

13 A Yes.

14 Q I'm going to show you what has been previously marked
15 as Government Exhibit -- just take a look at Government
16 Exhibit 104.5, 104.7, 104.8, 104.10, 104.29, and 104.32.

17 Do you have those photographs?

18 A Yes, I do.

19 Q And are those photographs taken once inside the
20 wooded area?

21 A Yes.

22 Q And do those photographs fairly and accurately depict
23 the way that wooded area appeared on February 5, 2010?

24 A Yes, they do.

25 MR. TIERNEY: Your Honor, I move those

1 photographs into evidence at this time.

2 MS. MACEDONIO: No objection, your Honor.

3 MR. LONDON: No objection.

4 THE COURT: 104.5, 104.7, 104.8, 104.10, 104.29,
5 and 104.32 admitted.

6 (Government Exhibits 104.5, 104.7, 104.8,
7 104.10, 104.29, and 104.32 in evidence.)

8 BY MR. TIERNEY:

9 Q Now, what is that a photograph of, detective, 104.5?

10 A Like the last one this is actually depicting the path
11 as you walk into the entrance gate or entry area going
12 into the wooded path.

13 Q And 104.7?

14 A This is the path once you go in past that gate. This
15 is the path looking south. This is a north to south path.

16 Q And so we're starting to work our way southbound to
17 Raymour & Flanigan?

18 A Yes.

19 Q And now I'll show you 104.8?

20 A 104.8 is, what happens is we walk in. We get closer.
21 And you can see the victim Vanessa Argueta in the middle
22 of the path just south of where we're standing.

23 Q It's a little hard to show in the overhead. Could
24 you just laser the location of --

25 A (Indicating).

1 Should I do it again?

2 Q No, that is good. Thank you.

3 Next I'll show you 104.10.

4 A Like I said earlier, we then moved forward, moving
5 south. And now you can see the victim, you know, from an
6 overall to a mid-range. And the victim was lying in the
7 path.

8 Q Now I'm going to show you what has been marked as
9 104.29.

10 What is that a photograph of?

11 A This is from Pinewood Avenue. And we're looking at
12 the entrance from Pinewood Avenue to the path.

13 Q So you walk past the victim out of the woods, and
14 you're out on Pinewood Avenue?

15 A Yes. Shooting back now to the entrance from Pinewood
16 Avenue.

17 Q 104.32.

18 A And again, this is the mid-range. So you can see
19 that the gate is open. And this is the actual entrance to
20 the path from Pinewood Avenue to go north towards Raymour
21 & Flanigan.

22 Q And now I'm just going to show you what has been
23 marked as 104.38?

24 Is that the -- is that a close-up of the gate
25 of, of the Pinewood gate entrance?

1 A Yes, it is.

2 Q Does that fairly and accurately depict the way that
3 looked?

4 A Yes.

5 Q And that fairly and accurately depicts the way it
6 looked on February 5, 2010?

7 A Yes.

8 MR. TIERNEY: I move that into evidence, your
9 Honor.

10 MS. MACEDONIO: I have no objection, your Honor.

11 MR. LONDON: No objection. That is 104.32, not
12 38?

13 MR. TIERNEY: No, I'm just doing 104.38.

14 THE COURT: 104.38 is admitted.

15 MR. TIERNEY: Thank you.

16 (Government Exhibit 104.38 in evidence.)

17 BY MR. TIERNEY:

18 Q And that is the entrance to the Pinewood gate?

19 A Yes, it is.

20 Q Now just now I ask you to take a look at exhibits
21 105.1?

22 A Yes.

23 Q 105.7?

24 A Yes.

25 Q And 105.15?

1 A Yes.

2 Q And 105.21?

3 A Yes.

4 Q 105.22?

5 A Yes.

6 Q And 105.24?

7 A Yes.

8 Q Are those pictures of -- now have you and Karen
9 Oswald gone back into the scene and have taken photographs
10 of the woods as well as the victim?

11 A Yes.

12 Now we're walking back towards Raymour &
13 Flanigan. And as you can see the victim was in the first
14 photograph 105.1.

15 Q Well, just before you get into a discussion -- do
16 those photographs fairly and accurately depict that area
17 of the way that that area of, the wooded area looked on
18 February 5, 2010?

19 A Yes.

20 MR. TIERNEY: I move those into evidence, your
21 Honor.

22 MS. MACEDONIO: No objection, judge.

23 MR. LONDON: No objection.

24 THE COURT: Those exhibits are admitted.

25 (Government Exhibit 105.1, 105.7, 105.15,

1 107.21, 105.22 and 105.24 in evidence.)

2 BY MR. TIERNEY:

3 Q I'm going to show you 105.1.

4 What is that a photograph of?

5 A This is the path. We're walking now north from that
6 south entrance. And there is the victim, Vanessa Argueta
7 is in the middle of the path.

8 Q Just point it out because it's a little --

9 A (Indicating)

10 MR. TIERNEY: For the record, it is to the center
11 left of the photograph.

12 BY MR. TIERNEY:

13 Q And now we're walking our way back to Raymour &
14 Flanigan?

15 A Yes.

16 Q Now I'm going to show you what has been previously
17 marked at 105.7?

18 A 105.7, we're walking and we're getting closer, which
19 is the mid-range shot, photo.

20 Q And 105.15?

21 A And 105.15, like I said is really your -- it is an
22 overall mid-range and a close-up. And this is the victim
23 Vanessa Argueta.

24 Q And 105.21?

25 A And that is a close-up of the victim Vanessa Argueta.

1 Q And 105.22? Is that a close-up?

2 A Another close-up. We take photos of the upper half
3 and then lower half of the victims. So this would be an
4 upper half photo of the victim Vanessa Argueta.

5 Q 105.24?

6 A This is the back, and now we're looking south. So we
7 took a photo of the back of Vanessa Argueta, just photos
8 from different angles.

9 Q I ask you to take a look at Government Exhibits
10 106.12, 106.15, 106.16, and 106.20 and 21.

11 Do you recognize those photographs?

12 A Yes, I do.

13 Q Are those photographs that you and Karen Oswald took
14 on February 5, 2010?

15 A Yes, they are.

16 Q And those are a close-up of the victim?

17 A Yes.

18 Q And do they fairly and accurately depict the way the
19 victim appeared on February 5, 2010?

20 A Yes, they do.

21 MR. TIERNEY: I move them into evidence at this
22 time, your Honor.

23 MS. MACEDONIO: No objection, judge.

24 MS. RANTALA: NO objection, judge.

25 THE COURT: Those photographs are admitted.

1 (Government Exhibits 106.12, 106.15, 106.16,
2 106.20 and 106.21 in evidence.)

3 BY MR. TIERNEY:

4 Q I'm going to show you what is marked as 106.12.

5 Do you recognize that, detective?

6 A Yes, I do.

7 Q What is depicted in that photo?

8 A There is a red stain and an injury to the left side
9 of Vanessa Argueta's forehead there.

10 Q And could you just, using the laser pointer, just
11 point that out for us?

12 A (Indicating.)

13 Q And in addition, while you were photographing the
14 scene, did you notice any damage to the sweatshirt at all?

15 A Yes, I did.

16 It's right here above the area, there is a hole
17 in the sweatshirt.

18 Q Now, I'm going to show you 106.15.

19 Do you recognize that?

20 A Yes, I do.

21 That was the sweatshirt that Vanessa Argueta was
22 wearing.

23 Q And with regard to that sweatshirt, do you see -- is
24 there any damage to that sweatshirt depicted in that
25 photo?

1 A Yes. There is a hole, a hole in the sweatshirt.

2 Q Just using the laser pointer, could you just point it
3 out?

4 A (Indicating.)

5 Q How big was that hole?

6 A It was a small circle. I don't know.

7 Q I'm next going to show you 106.20 -- I'm sorry
8 106.16.

9 A Doctor Hall was at the scene at this time examining
10 the victims. So during her examination she recognizes the
11 hole. She pulls back the sweatshirt. Upon pulling back
12 the sweatshirt we see a hole in the shirt of Vanessa
13 Argueta. And Doctor Hall had us photograph that.

14 Q Can you just show where the hole is?

15 A (Indicating.)

16 Q And that hole in the white sweatshirt, is it
17 surrounded by a red stain?

18 A Yes, it is.

19 Q And could you just, for the members of the jury, can
20 you explain who Doctor Hall is?

21 A Doctor Hall responds. She is the Medical Examiner.
22 So before any victim is transported she has to do a
23 thorough examination at the scene. And we actually
24 fingerprinted Vanessa Argueta at the scene, and asked
25 permission from Doctor Hall. So anything with the body,

1 Doctor Hall is the medical examiner.

2 Q She examined both of the victims?

3 A Yes , she did.

4 Q Now, were there any items of evidence that were
5 recovered as well?

6 A From the identification section or just from the
7 crime lab?

8 Q Yes.

9 A From the evidence?

10 Q Yes.

11 A There was a projectile. A projectile is after a
12 weapon is shot a projectile was collected by the crime
13 lab.

14 Q Do you have what has been marked as photograph --

15 THE COURT: Mr. Tierney, it is 4:30. Why don't
16 we finish for the day.

17 MR. TIERNEY: Okay.

18 THE COURT: We are not going to have Court
19 tomorrow, members of the jury, as you know.

20 We'll reconvene Monday morning at 9:30 -- Monday
21 is a holiday -- Tuesday morning at 9:30.

22 Don't discuss the case.

23 Don't read anything or listen to anything
24 regarding the case.

25 I'll see you all Tuesday at 9:30.

1 (The jury left the courtroom at 4:39 p.m.)

2 THE COURT: You can step down, detective.

3 Can you just go through the witnesses on

4 Tuesday?

5 MR. DURHAM: Your Honor, we'll continue with

6 Detective Kelly, with his testimony.

7 MR. LONDON: Could you speak into the

8 microphone? I can't hear you.

9 MR. DURHAM: We begin with Detective Kelly,

10 finish his testimony.

11 We anticipate getting to Carla Santos on

12 Tuesday. She is going to be an extremely lengthy witness.

13 We expect that will take us most of that day, if not into

14 Wednesday. And after that we'll call Detective Ralph

15 Rivera, Special Agent Edward Heslin.

16 THE COURT: Okay. I just want to get this --

17 are you suggesting for the week -- what do you expect in

18 terms of your projections?

19 MR. DURHAM: We made enough ground today, your

20 Honor, yes.

21 THE COURT: So are there any issues you want to

22 raise with respect to any of the witnesses?

23 MS. MACEDONIO: Nothing, your Honor.

24 MR. LONDON: Nothing from Mr. Ortega, your

25 Honor.

1 THE COURT: Okay, is there anything else?

2 There are a couple of issues with the letter.
3 Just so I know you mentioned it earlier. Do you know what
4 that issue is?

5 MS. RANTALA: That would be the letter
6 apparently found during a search of the Mr. Ortigas'
7 residence, not written by him but written to him.
8 Complete hearsay. We have no idea who this person is that
9 wrote it to him. So that is the relevance issue.

10 THE COURT: What is the government's theory of
11 admissibility on that?

12 MR. DURHAM: Your Honor, that letter refers to
13 the defendant by his name of Silent. Additionally the
14 second page, it is actually a front and back of either
15 side of the -- maybe you should have a copy, your Honor.
16 This is Government Exhibit 284. (Handing)

17 Essentially what it is, your Honor, there are
18 two legal pages. One side has writing front and back.
19 The second page is MS-13 graffiti, including the letters
20 STLS, which the government's theory is signifies the
21 defendant's clique. And it is also consistent with a
22 tattoo that he has on his hand.

23 THE COURT: What is the rest? Is this document
24 going to be connected?

25 MR. DURHAM: Yes, your Honor. They were

1 recovered together.

2 THE COURT: Do you know who the author of the
3 letter is, or what your theory is of who wrote the letter?

4 MR. DURHAM: Your Honor, the letter itself
5 contains a lot of reference to gang membership. We have
6 identified the sender of the letter who at the time was a
7 federal inmate. I can't remember what facility he was at
8 at the time. But essentially he is another MS-13 member
9 writing.

10 So our theory of admissibility is it goes to
11 show that the defendant was a member of the MS-13, as far
12 back as 2008. And as the Court recalls, Mr. London --

13 THE COURT: Do you know when this letter was
14 written?

15 MR. DURHAM: Either the letter itself, your
16 Honor, or the envelope it was sent in contains a date.

17 THE COURT: You said the author is an inmate who
18 is an MS-13, based on the content of the letter or
19 somebody is identifying him as an MS-13?

20 MR. DURHAM: My recollection, your Honor, is the
21 return address included the nickname, his marshal number,
22 and the facility where he is incarcerated.

23 THE COURT: Who can identify him as a member of
24 the gang, is the question. Based on the content of the
25 letter, or some other cooperating witness who can identify

1 he is a member of the gang?

2 MR. DURHAM: Your Honor, in our theory the
3 sender of the letter is somewhat irrelevant. I'm
4 responding to the Court's question about the contents of
5 the letter. It is identifying the defendant by his gang
6 name, his clique, and then the content of the letter
7 refers to gang business.

8 THE COURT: In order for it to be admissible, it
9 would have to be a coconspirator. Correct?

10 MR. DURHAM: Well, it is a physical item within
11 the possession of the defendant, your Honor.

12 THE COURT: I know. But it is a statement. .
13 Just because someone is in physical possession doesn't
14 mean with your theory that whatever is in there is
15 evidence.

16 Let me think about it, okay? If I can have the
17 original or a copy of the translation.

18 MR. DURHAM: That has been marked as Government
19 Exhibit 284A. It is one of the additional exhibits we
20 provided to the Court this week.

21 THE COURT: Okay, I'll think about it.

22 MR. LONDON: I think your Honor has picked up
23 the highlight of our objection, which is unless there is
24 some proof that he is a coconspirator, it is still
25 irrelevant and immaterial.

1 MS. RANTALA: And complete hearsay to boot.

2 MR. LONDON: Also, judge, we have not been
3 furnished with a copy of the envelope. We had no idea
4 that they had identified the sender.

5 THE COURT: Okay, if you can just highlight the
6 --

7 MR. DURHAM: Your Honor, this letter will be
8 coming in through a witness who will testify in the trial.
9 So we don't need this issue to come up this week.

10 THE COURT: Okay, that is why I asked about it.
11 And I can look at it in advance.

12 MR. TIERNEY: Your Honor, we have one request.

13 We would ask that if the defense is going to use
14 exhibits with witnesses, they provide the government with
15 a copy of that. I understand they have, they don't want
16 us prepping our witness to respond to documents. But once
17 the defendant is on cross-examination, we would ask -- I'm
18 sorry -- once the witness is on cross-examination, to the
19 extent that they're showing the witness a document to
20 impeach them or to refresh to their recollection, we would
21 ask that a copy be provided.

22 Mr. London yesterday was showing Mr. Sosa a
23 number of documents. We didn't have copies. We let it
24 go. But going forward we request copies of any documents
25 they use.

1 THE COURT: I am going to direct that if you
2 know in advance you're going use a document, show it to
3 them in advance.

4 MR. LONDON: It is a reasonable request, your
5 Honor.

6 THE COURT: Okay, I have some cases for the
7 record regarding some rulings that I made this week. But
8 being that it is 4:45 on Thursday, I won't do that to you
9 now. We'll do that on Tuesday.

10 Okay, I'll see you all Tuesday at 9:30.

11 (Whereupon the trial was adjourned at 4:47 p.m.)
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